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THE LAWS CONCERNING

RELIGIOUS WORSHIP;

ALSO

MORTMAIN AND CHARITABLE USES.

BY

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PREFACE.

THE writer of this little Volume is of opinion that it supplies a want.

Chapter I. contains a chronological narrative of Ecclesiastical Legislation in England, with Abridgments of the Statutes on the subject, from the Conquest to the present time.

Chapter II. is a Compendium of the Law of Mortmain and Charitable Uses.

Chapters III. and IV. contain Summaries of the Law concerning Ministers of Religion and Trustees of Charities.

The writer, during a professional practice of more than forty years, experienced frequently and constantly the want of a Compendium on the subjects treated of in this little Book.

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THE LAWS CONCERNING RELIGIOUS WORSHIP.

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This principle contained in the King's address to his Parliament - 53
"The Act for strengthening the Protestant Interest in these Kingdoms," 5 Geo. I. c. 4 - - - - - - - - - - - *ib.*
An Act passed relieving Quakers from using the words "In the presence of Almighty God" in their affirmation, and substituting "I solemnly, sincerely, and truly affirm and declare," 8 Geo. I. c. 6 - - - - - - - - - - - - 54
Geo. II. became King, 11 June, A.D. 1727 - - - - - - - *ib.*
Inherited his father's liberal principles - - - - - - - *ib.*
Act passed for adopting summary proceedings against Quakers for the recovery of tithes - - - - - - - - - *ib.*
Geo. III. became King, 25 October, 1727 - - - - - - *ib.*
The Act for the further relief of Protestant Dissenting ministers and schoolmasters, 19 Geo. III. c. 44 - - - - - - 54
Detailed provisions of the Act - - - - - - - - - 54, 55
The Act for preventing certain abuses and profanations on the Lord's Day, 21 Geo. III c. 49 - - - - - - - - - - 56
Detailed provisions - - - - - - - - - - - - 57, 58
Statute passed at the instigation of Dr. Porteous, Bishop of London *ib.*
A place registered for public worship where nothing hostile to religion is practised not within the Act - - - - - - *ib.*
An "Aquarium" is prohibited - - - - - - - - - *ib.*
So is every place of public amusement for money - - - - - 59
The Act to repeal certain Acts, and amend other Acts relating to religious worship and assemblies, and persons teaching or preaching therein, 52 Geo. III. c. 155 - - - - - - 60
Detailed provisions of the Act - - - - - - - - - 60, 61
The Act to relieve persons who impugned the doctrine of the Holy Trinity from certain penalties, 53 Geo. III. c. 160 - - - - 62
Geo. IV. became King, A.D. 1820 - - - - - - - - - *ib.*
The Act to repeal the penal clauses of the Corporation and Test Acts against Nonconformists, 9 Geo. IV. c. 17 - - - - - 62
Detailed provisions of the Act - - - - - - - - - - 62, 63
The Act for the relief of His Majesty's Roman Catholic subjects, 10 Geo. IV. c. 7 - - - - - - - - - - - - 64
Detailed provisions of the Act - - - - - - - - 65, 66, 67, 68
William IV. ascended the throne, 26 June, 1830 - - - - - *ib.*
The Act for better securing the charitable donations and bequests of His Majesty's Roman Catholic subjects, 2 & 3 Will. IV. c. 115 - - - - - - - - - - - - - - 69
Detailed provisions of the Act - - - - - - - - - - *ib.*
The Act for marriages in England, 6 & 7 Will. IV. c. 85 - - - 70
Detailed provisions of the Act - - - - - - - - - - *ib.*
Most of the old penal statutes had become practically inoperative, but the Act 9 & 10 Vic. c. 59 intituled "An Act to relieve Her Majesty's subjects from certain penalties and disabilities in

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regard to religious opinions," passed in A.D. 1846, expressly repealed them, 9 & 10 Vic. c. 59 - - - - - - - 71
Detailed provisions of the statute - - - 72, 73, 74, 75, 76, 77, 78
The Act to amend the Law concerning the certifying and registering of places of Religious Worship in England, 18 & 19 Vic. c. 81. - - - - - - - - - - - - - - - 79
The Act for securing the liberty of religious worship, 18 & 19 Vic. c. 86 *ib.*
The Act for the further protection of places of religious worship and Ministers of Religion, 23 & 24 Vic. c. 32 - - - - - 80
The Act for the further relief of Her Majesty's subjects professing the Jewish religion, 23 & 24 Vic. c. 63 - - - - - - 81
The Act to render it unnecessary to make and subscribe certain Declarations as a qualification for offices and employments, 29 Vic. c. 22 - - - - - - - - - - - - *ib.*
The Act for the abolition of compulsory Church rates, 31 & 32 Vic. c. 109 82
The Act for providing Elementary Education in England and Wales, 33 & 34 Vic. c. 75 - - - - - - - - - - - - 83
Section protecting the pupils against any infringement of religious opinion or scruple, *ibid*, s. 7 - - - - - - - - - *ib.*
"The Act to alter the Law respecting Religious Tests in the Universities of Oxford, Cambridge, and Durham, and in their Halls and Colleges," 34 Vic. c. 26 - - - - - - - - - - 83
Detailed provisions of the statute - - - - - - - - 83, 84
The Act to amend the Law respecting Prosecutions under 29 Chas. II. c. 7 : 34 & 35 Vic. c. 87. - - - - - - - - - - 84
Detailed provisions - - - - - - - - - - - - - 85
The Act to amend the Act 21 Geo. III. c. 49 ; 38 & 39 Vic. c. 80 - 85
Detailed provisions - - - - - - - - - - - - - 86
The Act to amend the Burial Laws (Mr. Osborne Morgan's Act), 43 & 44 Vic. c. 41 - - - - - - - - - - - - - 86
Detailed provisions of the statute - - - - - - 87, 88, 89, 90

CHAPTER II.

THE LAW OF MORTMAIN AND CHARITABLE USES.

Property, real or personal, may be given or granted for any religious, educational, scientific or charitable use - - - - - - 91
Real property and impure personalty cannot be given by will, but by deed, in compliance with the Mortmain Acts - - - - - *ib.*
Pure personalty may be so given by will - - - - - - - *ib.*
The property so given will be devoted to the object and in the manner stated in the deed or will creating the charity, according to its ordinary meaning and grammatical construction, assisted, if ambiguous, by the status and opinions of the donor, and the law of the country - - - - - - - - - - - - *ib.*

The facts in Attorney-General *v.* Pearson - - - - - -
Judgment of Lord Chancellor Eldon on motion for injunction - - 93
Judgment of the Vice-Chancellor of England on the hearing of the cause - - - - - - - - - - - - - - - - 95
Facts in Attorney-General *v.* Shore and others - - - - 97, 98
Judgment of the Vice-Chancellor - - - - - - - - -
The appeal against the judgment of the Vice-Chancellor was heard before Lord Chancellor Lyndhurst, assisted by Mr. Justice Pattison and Mr. Baron Alderson - - - - - - - -
Judgment delivered by Mr. Baron Alderson for himself and Mr. Justice Pattison - - - - - - - - - - 101,
Judgment of Lord Chancellor Lyndhurst - - - 103, 104, 105,
Agitation occasioned in the religious community by the judgments delivered in Attorney-General *v.* Pearson, and Attorney-General *v.* Shore and others - - - - - - - - - - -
Necessitated the "Act for the regulation of suits relating to Meeting-houses and other Property held for religious purposes by persons dissenting from the United Church of England and Ireland," 7 & 8 Vic. c. 45 - - - - - - - - - -
The Act declared that the usage of any meeting-house during a period of 25 years immediately preceding any suit relating thereto, should in the absence of a will, deed, or other instrument setting forth the trusts hereof, either *per se* or by reference to a book or other document, be evidence that the religious doctrines or opinions which had been taught or observed in such meeting-house during such period of 25 years, might be properly taught or observed therein, and the right or title of the congregation to hold such meeting-house, together with any burial-ground, Sunday or day school or minister's house attached thereto, and any fund for the benefit of such congregation or minister, or of his widow, or any officer thereof, should not be called in question on account of the doctrines or opinions or mode of worship so taught or observed in such meeting-house - - - - - - - - - - - - - 107,
A great proportion, probably the half, of the land in England had during and before the Middle Ages been given or granted, principally under the undue influence of Popish priests, for religious and charitable uses, that the Legislature resolved on measures of restraint - - - - - - - - - - - - -
The statute of Magna Charta contained the first provisions of restraint upon gifts and alienations for religious uses, 9 Hen. III. c. 36 - - - - - - - - - - - - - - -
The Popish Priests evaded the statute by purchasing lands holden of themselves, taking leases for long terms of years, and other contrivances - - - - - - - - - - - - -
The statute *de viris religiosis*, 7 Edw. I. c. 2 - - - - - -

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Enacted that no religious or other person that will buy or sell any lands or appropriate such whereby the same should go into mortmain under pain of forfeiture of such lands - - - 110
The next Lord of the Fee might, in case of any offence against that statute, enter on the lands given or granted in mortmain and seize the same - - - - - - - - - - - *ib.*
The Acts extended to gifts of lands to a corporation as well as to purchases - - - - - - - - - - - 111
A freeman of London might by custom devise land in mortmain, but it must be situate in the City of London - - - - - *ib.*
A lease for 100 years or upwards was prohibited by the Acts, but not a lease for 20 years or, *semble*, 50 years - - - - - *ib.*
The Lord must enter on the land within a year of the gift or grant computed from the day next after the alienation - - - *ib.*
In the case of alienation by a remainderman, the Lord cannot enter till after the determination of the preceding estate - - - *ib.*
The heir of a tenant in tail who had alienated in mortmain, was held not to have been barred by the Acts - - - - - *ib.*
The Sovereign cannot enter on land forfeited in mortmain till after inquisition found - - - - - - - - - - *ib.*
Procedure on inquisition, viz., by Commissioners assisted by a jury
Every one of Her Majesty's subjects who is interested may traverse the inquisition - - - - - - - - - - - *ib.*
Permission to traverse obtainable by petition to the Chancery Division of the Supreme Court - - - - - - - - *ib.*
The ecclesiastics contrived a further evasion of the statute *De donis*, viz., by ejectment against the tenant in possession of the lands, who by collusion made no defence, and judgment was obtained for the religious house or person - - - - - 112
Although the proceeding was a conventional fraud between the religious house and the owner of the land, the judges held the recovery conclusive, as having been obtained by recorded process - - - - - - - - - - - - *ib.*
This contrivance was the foundation of common recovery formerly adopted to defeat estates in tail - - - - - - - *ib.*
Act to remedy the evil, 13 Edw. I. c. 32 - - - - - - - *ib.*
Provisions of the statute - - - - - - - - - - 113
A writ *Quale jus* issued pursuant to the Act directed to an Escheator to inquire into the right of the religious house - - *ib.*
A jury assisted in the inquiry - - - - - - - - - 114
Notice of the inquisition must be given to the Lord of the Fee - *ib.*
The Knights Templars and Knights Hospitallers in the early part of the twelfth century obtained extensive possessions - - *ib.*
Their lands were free of tithe and from the jurisdiction of the Ecclesiastical Courts - - - - - - - - - *ib.*

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They were amenable to a Court of Conservators of their own order, and they could give sanctuary to felons - - - - 114
Their banner bore the ensign of the Cross, which their tenants erected on their dwellings in assertion of their privileges - - *ib.*
Other tenants not so entitled falsely displayed similar ensigns to claim like protection - - - - - - - - - *ib.*
Act to remedy the evil, 13 Edw. I. c. 33 - - - - - - - *ib.*
Provided that tenants falsely setting up crosses on their lands in prejudice of their feudal lords, should forfeit the same - - *ib.*
Inferior lords granted their lands to other persons to be holden of the grantors as mesne lords - - - - - - - - 115
Act to prevent the practice, 9 Hen. III. c. 32 - - - - - - *ib.*
Declared that no man should give or sell his land without reserving sufficient to answer the demand of his superior lord - - - *ib.*
The statute *Quia emptores* contained more effectual provision for suppressing the practice of subinfeudation, 18 Edw. I. c. 1 - *ib.*
Authorized every freeman to sell his lands, so that the grantee should hold of the chief lord of the fee by the same services as previously, but the lands should not go into mortmain - - *ib.*
A practice now prevailed for religious persons, with the connivance of the tenants in possession to appropriate lands for burial-ground, without licence from the feudal lord or King, and by this device they acquired large possessions - - - - - *ib.*
Act declaring such practice within the prohibition of the statute *de viris religiosis*, 15 Richard II. c. 5 - - - - - - *ib.*
The next contrivance of the ecclesiastics to evade the statutes of mortmain was to introduce from the Roman law the doctrine of the use or benefit of land, as distinct from its bare possession - - - - - - - - - - - - - - - *ib.*
They procured grants of lands to a third person to be holden for the use or benefit of the religious house - - - - - - - *ib.*
The Judges enforced the trust thus created - - - - - - *ib.*
This practice occasioned the same mischief as direct alienation in mortmain - - - - - - - - - - - - - - *ib.*
Act compelling, within a given time, all persons so possessed of lands to regularly convey them in mortmain by licence of the King and Lords, or alienate them for other uses, under penalty of forfeiture thereof, 15 Richard II. c. 5 - - - - - - 116
All the statutes against mortmain hitherto passed had reference to ecclesiastical persons only, but the last-mentioned Act included all property purchased or to be purchased for "Guilds or Fraternities" and "Lay Corporations," A.D. 1391 - - - - - *ib.*
All assurances and trusts of lands to the use of parish churches, &c., erected of devotion, &c., declared void, 23 Hen. VIII. c. 10 - 117
Act assigning to the King all monasteries, priories, and other reli-

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gious houses of monks, canons, and nuns, whose lands did not exceed £200 a year, 27 Hen. VIII. c. 28 - - - - - - 117
All monasteries, &c., dissolved, suppressed, or forfeited, should vest in the King and his lawful heirs and successors, 31 Hen. VIII. c. 13 - - - - - - - - - - - - - - *ib.*
The Act enumerating "Charitable uses," viz., 43 Eliz. c. 4:— - 118
Gifts for the relief of aged, impotent, and poor people - - *ib.*
For the maintenance of sick and maimed soldiers and mariners *ib.*
For ease of poor inhabitants concerning payment of taxes - *ib.*
For aid of young tradesmen, handicraftsmen, and persons decayed - - - - - - - - - - - - - *ib.*
For relief, stock, and maintenance of Houses of Correction - *ib.*
For marriages of poor maids - - - - - - - - *ib.*
For education and preferment of orphans - - - - - *ib.*
For schools of learning, free schools, and scholars in Universities *ib.*
For relief or redemption of prisoners or captives - - - *ib.*
For repair of bridges, ports, havens, causeways, churches, sea-banks, and highways - - - - - - - - - *ib.*
The Courts have decided that the cases next hereinafter mentioned were charitable uses within the meaning of the statutes against mortmain, viz.:—
A bequest for the education of the poor by means of schools - *ib.*
For the relief of the poor by hospitals - - - - - - *ib.*
A bequest to the poor inhabitants not receiving alms of a parish *ib.*
To the widows and children of seamen of a specified locality - *ib.*
A gift to the British Museum - - - - - - - - *ib.*
Or for any other local or general public library or museum - *ib.*
For the improvement of a specified city - - - - - - *ib.*
For the erection of waterworks to the use of a particular town *ib.*
For a public botanical garden - - - - - - - - 119
For the promotion of the Protestant faith by the maintenance of a preacher thereof in a certain chapel - - - - *ib.*
A devise of land to a priest and his successors, and a bequest of proceeds of sale of land to the minister of the Catholic chapel at Kendal - - - - - - - - - - *ib.*
A bequest of impure personalty to the Newport Catholic chapel, and the Brighton Catholic chapel, for the general purposes thereof, paying to the officiating priest for the time being, and to the sisters of charity of Saint Paul at Selley Oak, near Birmingham - - - - - - - - - - - - *ib.*
In an action against a corporation to have carried into effect certain charitable trusts of a deed of feoffment made by the corporation in A.D. 1599, whereby the feoffees were granted certain lands upon trust to permit the corporation to have the premises, and receive the rent thereof towards repairing the church and the conduits of the town, the relief of the poor,

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the maintenance and fortifications, and other charitable, needful, and necessary uses for the town, as to the corporation should seem meet. Mr. Justice Chitty held that the word "charitable" was not equivalent to "benevolent," but meant the purposes enumerated in 43 Eliz. c. 4, and that the four objects specified in the deed were all charitable within the meaning of the Mortmain Acts - 119

For the relief of poor Dissenting ministers in England - - 120

An annuity to keep in repair the chimes of a specified parish - *ib.*

To erect an organ gallery in a particular parish church - - *ib.*

To a parish clergyman for preaching an annual sermon on a specified day - - - - - - - - - - - *ib.*

A yearly sum to be paid to the singers in a certain church - *ib.*

A bequest for the advancement of the Christian religion among Infidels - - - - - - - - - - *ib.*

To the lineal descendants of A. as they might severally need the charity, to be paid them by the trustees of the fund out of the interest or proceeds thereof - - - - - - *ib.*

To establish a fever hospital - - - - - - - - *ib.*

Towards the expenses of building a church - - - - *ib.*

To a Church Diocesan Building Society towards erecting a church without naming any then existing church or site for one

To a society for prevention of cruelty to animals for an object of their charity - - - - - - - - - - *ib.*

To a corporation of £3,000 consols, of which £1,000 was to be applied in the erection of a dispensary there, and the remainder invested as an endowment for its maintenance - *ib.*

Of stock for the payment of debts or claims upon an almshouse situate on land then in mortmain - - - - - - - 121

A lease to trustees for 99 years of a building used as a Dissenting chapel, reserving to the lessors a right to the enjoyment of certain pews therein - - - - - - *ib.*

A devise of real estate subject to a secret trust or understanding that it be used for a charity - - - - - - - - *ib.*

A gift of £1,000 from the accumulated rents of houses to be applied in the erection of a building and the establishment of an institution to train ladies for the important duties of "wives, mistresses, and housekeepers" - - - - - *ib.*

A gift for the perpetual repair of a monument in a church - *ib.*

The principle of the foregoing decisions is that the charities were of a *public* nature - - - - - - - - - *ib.*

The charities next hereinafter mentioned have been holden not to be prohibited by the Mortmain Acts, viz.: 122

A gift to one of the chartered Companies of the City of London for an increase of their stock of corn for the service of the market there - - - - - - - - - - - *ib.*

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For such objects of benevolence as the trustee in his discretion should most approve - - - - - - - - - - 122
A devise to trustees of a reversion in land to be applied by them and the officiating minister for the time being of a Methodist congregation as they should think fit to apply the same - - - - - - - - - - - - - - - *ib.*
A grant in fee of land with a chapel on it to trustees for the use of a congregation worshipping therein, reserving to the grantor and to the trustees after her death, power to appoint the minister and make rules for their government *ib.*
A grant by deed of land to repair a vault and tomb on part of it and permitting it to be used for the interment of the grantor and his family - - - - - - - - - *ib.*
To the Mayor of Dublin for such objects as he should deem most deserving - - - - - - - - - - - *ib.*
A devise to a friendly society - - - - - - - - - *ib.*
A gift of impure personalty to trustees to be divided among such charities as they should most approve - - - - *ib.*
To a religious society which did not practise public acts of religion - - - - - - - - - - - - - *ib.*
To ten poor clergymen to be selected by A - - - - - 123
For the benefit of a borough town - - - - - - - *ib.*
For building almshouses when land should be given for the purpose - - - - - - - - - - - - - *ib.*
For free or ragged schools in a parish, where was a free school for poor children of which the testator was the chief supporter - - - - - - - - - - - - *ib.*
A bequest of money from realty to erect a monument for the testator - - - - - - - - - - - - *ib.*
A devise in trust for the sisters of mercy at B, who were ten or twelve in number, and whose mission was charitable
The principle underlying the last mentioned series of cases is that the charities were of a *private* character - - - *ib.*
The object of the statutes against mortmain hitherto passed was to prevent land becoming the property of corporate bodies and therefore inalienable, A.D. 1736 - - - - *ib.*
The Acts of Parliament subsequently passed applied to real property given or granted to individuals as well as to corporations, for charitable uses - - - - - - - - - - - - *ib.*
The Act to restrain the disposition of land whereby the same became inalienable, 9 Geo. II. c. 36 - - - - - - - - 124
Detailed provisions of the statute - - - - - - - 124, 125
Sec. 2 of 9 Geo. II. c. 36, was explained by a subsequent Act, 9 Geo. IV. c. 85 - - - - - - - - - - - - 126
The consideration must be paid or rendered to the grantor by the party receiving the benefit of the grant - - - - - - *ib.*

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Lands of copyhold tenure held to be within the Act - - - - 127
Statute extends to land of every tenure, and to every interest in land, and to every charge or lien upon, or rent or profit out of, land - - - - - - - - - - - - - - *ib.*
Evidence extraneous of the deed admissible to impeach it - - 128
The grant must take immediate effect in possession - - - *ib.*
If its operation be postponed, or any benefit reserved to the grantor, the grant is void - - - - - - - - - - *ib.*
Grant of land subject to a lease held void, because it did not pass the rent reserved in the lease to the grantee - - - - - - *ib.*
Retention of the deed by the grantor after he executed it held not to vitiate the grant - - - - - - - - - - - *ib.*
Enactment that a lease for years shall be valid within the meaning of 9 Geo. II. c. 36, if made to take effect in possession within one year of the date thereof, 26 & 27 Vic. c. 106 - - - 129
Rent or other annual payment a valuable consideration within the meaning of 9 Geo. II. c. 36, 27 Vic. c. 13 - - - - - *ib.*
Execution of the deed by the grantor alone before enrolment held sufficient - - - - - - - - - - - - - *ib.*
Execution by the grantor in the presence of two witnesses necessary, his acknowledgment thereof being insufficient - - - - *ib.*
The court will not even after a long lapse of years presume enrolment of the deed, but the fact must be proved - - - - 130
The first grant in mortmain alone necessary to comply with the requirements of 9 Geo. II. c. 36, every subsequent disposition being unaffected by the statute - - - - - - - - *ib.*
Lease of a Dissenting chapel for 99 years at the annual rent of one shilling, and containing a covenant for renewal of the term, held void for want of enrolment - - - - - - - - - *ib.*
A grant in mortmain made pursuant to unenrolled deeds was upheld - - - - - - - - - - - - - - - 131
The court appointed new trustees of a charitable use on unopposed application, though the original grant was not enrolled - - *ib.*
Semble, a mortgage to the trustees of a charitable fund does not require enrolment - - - - - - - - - - - *ib.*
Exceptions from the Charitable Uses Act, 9 Geo. II. c. 36, viz., 24 Vic. c. 9 - - - - - - - - - - - - 131, 132
No assurance made thereafter of any hereditament should be void because:—
The deed was not indented, s. 1 - - - - - - - - *ib.*
Or that it reserved a peppercorn or other nominal rent - - *ib.*
Or any mines or minerals - - - - - - - - - *ib.*
Or easement - - - - - - - - - - - - *ib*
Or covenant to erect or repair buildings - - - - - - *ib.*
To form or repair streets or roads - - - - - - - *ib.*

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Or reserved any right of re-entry on non-payment of rent, or breach of covenant - - - - - - - - - - 132

And in case of copyhold hereditament, because the assurance was not by deed - - - - - - - - - - - - - *ib.*

And in case of an assurance, for full valuable consideration, made *bonâ fide* : - - - - - - - - - - - - - *ib.*

That the consideration was wholly or partly of a rent or other yearly payment, provided the same should be reserved to the representatives of the grantor as well as to himself - - - - - *ib.*

Where the charitable uses are declared by a separate deed it should not be necessary to enrol the deed of conveyance, but the separate deed must be enrolled within six calendar months after execution, s. 2 - - - - - - - - - - *ib.*

Every assurance for a charitable use theretofore made for full valuable consideration and *bonâ fide*, might be enrolled within twelve calendar months after the passing of that Act, s. 3 - *ib.*

Enrolment of any separate deed containing the charitable use might be made within twelve calendar months after the passing of that Act, which would also validate the conveyance, s. 4 - *ib.*

Money, *bonâ fide* expended in the improvement by building or otherwise of any land granted to a charitable use and held by the grantees by virtue of such assurance, should be deemed equivalent to money actually paid at or before the execution thereof, 25 Vic. c. 17, s. 5 - - - - - - - - - - 133

Leave might be granted on summary application by the Chancery Division of the High Court to enrol a deed, lost or destroyed, for a charitable use, 27 Vic. c. 13, s. 3 - - - - - - - *ib.*

Rent, or other annual payment, declared a valuable consideration for such assurance, s. 4 - - - - - - - - - - *ib.*

A trustee, governor, director, or manager of a charity, or any person interested therein, might on summary application to the Chancery Division obtain an order for the enrolment of any deed for a charitable use, 29 & 30 Vic. c. 57 - - - - - *ib.*

All alienations, grants, conveyances, leases, assurances, surrenders, or other dispositions, except by will, *bonâ fide* made after the passing of that Act to a trustee or trustees on behalf of any society or body of persons associated together for religious purposes, or for the promotion of education, arts, literature, science, or other like purposes of land, for the erection thereon of a building for such purposes or any of them, or whereon a building for such purposes or any of them should have been erected, should be exempt from the provisions of 9 Geo. II. c. 36, and 24 Vic. c. 9, s. 2. Provided the same should have been really and *bonâ fide* made for a full valuable consideration actually paid upon or before the making thereof, or reserved by way of rent, rentcharge, or other annual payment, or partly

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paid and partly reserved as aforesaid, without fraud or collusion, and provided each piece of land should not exceed two acres, 31 & 32 Vic. c. 44 - - - - - - - - - - 134

Any trustee or trustees of such deed, if he or they should think fit, might at any time enrol the grant in the Chancery Division of the High Court, s. 2 - - - - - - - - - - *ib.*

No acknowledgment necessary before the enrolment of such deed, s. 3 - - - - - - - - - - - - - - - *ib.*

The last-mentioned statute has placed every deed specified therein in the same position in every respect as an ordinary assurance 135

Corporations and trustees holding moneys for public or charitable uses may invest the same on real security, 33 & 34 Vic. c. 34 - *ib.*

The security must be enforced by sale and not by foreclosure - *ib.*

All gifts and assurances of land by deed or will for a public park or schoolhouse for elementary education, or a public museum, and all bequests of personal estate for the purchase of land for any such purpose only, should be valid, 34 Vic. c. 13, s. 4 - - - - - - - - - - - - - *ib.*

The deed, if without valuable consideration, and the will, to be valid, must have been made twelve calendar months before the death of the grantor or testator, and be enrolled in the books of the Charity Commissioners, within six calendar months after the same should have come into operation - - *ib.*

The land so given must not exceed 20 acres for a public park, or two acres for a public museum, or one acre for a schoolhouse - - - - - - - - - - - - - *ib.*

Any person or persons seised beneficially in fee simple or fee tail, or for life in any land of freehold tenure, and in possession thereof, might grant, by way of gift, sale, or exchange in fee or for any term of years, any quantity not exceeding one acre, not being part of a demesne or pleasure ground of a mansion-house, as a site for a church, chapel, meeting-house, or other place of Divine worship, or for the residence of a minister officiating in any such place of worship, or in any place of worship within a mile of such site, or for a burial-place, or any number of such sites, 36 & 37 Vic. c. 50, s. 1 - 136

If the grant should be made by a tenant for life only the beneficial remainder-man or reversioner in fee simple or fee tail must join in the grant - - - - - - - - - - - - *ib.*

If the land should be used for any purpose other than those before specified, or if the same should for a whole year discontinue to be used for any of the objects specified, the land shall revest in the former owner - - - - - - - - - 137

The provisions of the statute should apply to land of copyhold tenure, if the conditions of the Lands Clauses Consolidation Act, 1845, should be complied with - - - - - - - - *ib.*

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A short form of grant under the statute provided, which is optional, s. 4
Grant valid notwithstanding the death of the grantor within one year of its execution - - - - - - - - - 137
Execution in the presence of one witness sufficient - - - *ib.*
Semble, land only within the statute - - - - - - - *ib.*
If a building should be on it the Act would not apply - - - *ib.*
Act does not apply to an easement - - - - - - - 138
All persons might by will, executed three months or more before death, devise real property not exceeding five acres, and bequeath personalty not exceeding £500 in value, for erecting, repairing, purchasing, or providing any church or chapel where the liturgy of the Church of England should be used, or any manse for the residence of any minister of such church or chapel, or for any outbuilding, churchyard, or glebe for the same, 48 Geo. III. c. 108 - - - - - - - - - 140
Any gift exceeding five acres or £500 may, on petition to the Lord Chancellor, be reduced to those limits - - - - - *ib.*
No glebe exceeding 50 acres should be increased by a gift under the last mentioned Act of more than one acre - - - - *ib.*
A gift of one acre of land on which a district church was built, and a subsequent grant thereof in perpetuity for religious worship, held valid - - - - - - - - - - 141
It is an illegal evasion of the statute against charitable uses to bequeath by testament a sum of money to buy land or real property granted by deed by the testator for a charitable use, if the latter should fail, although no indication of the object should appear in the will - - - - - - - - 142
A bequest of money on condition that the legatee should furnish land for a charitable object invalid - - - - - - 143
Also a devise of land, provided the devisee should pay a sum of money to the executrix who was directed to apply the residuary estate which included land to a charity, was invalid - - *ib.*
A bequest of money to redeem land belonging to trustees for a charitable use from a mortgage upon it is invalid - - - *ib.*
The same principle extended to a bequest of money to pay off an equitable mortgage of land belonging to a charity, or a charge or lien on such land - - - - - - - - - - 144
A bequest of money to pay debts incurred in respect of a chapel, but not constituting a legal lien upon it, was held valid - - *ib.*
A conveyance of land for the purpose of erecting upon it a poor's-house is not prohibited by the Acts relating to charitable uses - *ib.*
A deed conveying land, purchased by subscriptions, to such uses as one of the subscribers should appoint, who by a subsequent deed executed the appointment for a charity, were holden to be void, because neither deed complied with all the conditions of 9 Geo. II. c. 36, s. 1 - - - - - - - - - - *ib.*

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A deed of gift of land to be sold and the proceeds applied for a charitable use, held void for non-compliance with s. 1 - - 145

Real property conveyed upon a secret trust for a London parish, the income from which was received by the churchwardens and applied to charitable purposes, was held to be within the prohibition of the same section - - - - - - - - *ib.*

A deed of gift executed and enrolled according to that section to three trustees to establish a charity, and a devise of the same land to three persons, two of them being trustees of the deed, if the testatrix had not in her lifetime effectually conveyed the land, were held void, because the testatrix died within a year of the execution of the deed, and the devise was within the prohibition of the statute - - - - - - - - - - - - *ib.*

A testator bequeathed, *inter alia*, his leasehold property to four persons, members of a Presbyterian church, to which he also belonged, absolutely. In a suit the legatees admitted the testator intended the leasehold estate should be applied for the benefit of a Presbyterian college; the court held the bequest of the leasehold void - - - - - - - - - - - 146

The court will compel the grantor, grantee, or devisee, to answer on oath whether the property was given upon a secret trust for a charity - - - - - - - - - - - - - *ib.*

The *onus* of proving the secret trust lies on the party impeaching the gift - - - - - - - - - - - - - 147

The grantee or devisee may, if the gift be valid, insist on retaining the property discharged from a secret charitable use if he were not party or privy to the secret trust - - - - - - *ib.*

Should the heir-at-law impugning such gift fail to prove the secret trust by written or verbal evidence, his action will be dismissed with costs - - - - - - - - - - - - - *ib.*

The heir may claim an issue *devisavit vel non*, but if he refuse it the will will be established - - - - - - - - - - *ib.*

A gift by will of land or other real property, or chattel real or of any interest in such property, or easement from it, for a charitable use, is void - - - - - - - - - - - - *ib.*

A bequest of leaseholds for a charitable use is void under all circumstances - - - - - - - - - - - - - - *ib.*

A bequest of money charged on land or chattel real is void, *ex. gr.* the proceeds of sale of such property - - - - - - 148

Of money due on mortgage or lien of such property - - - *ib.*

A judgment registered against the land of the debtor - - - *ib.*

Bequests of money owing on the security of turnpike tolls, or of the poor's or county rates, or on the Birmingham Town Hall rates *ib.*

But Jessel, M.R., decided that money secured by bond of county justices on the police rates was pure personalty - - - *ib.*

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Bacon, V.-C., held that the bonds of the commissioners of the Norland estate, secured by rates on the owners and occupiers, were pure personalty - - - - - - - - - - - - 149

A devise of partnership property, consisting partly of real estate, to be sold and the proceeds applied to a charitable purpose, held void as to the realty - - - - - - - - - - - - *ib.*

So was a residuary bequest of, *inter alia*, a legacy from a prior testator, payable out of mixed real and personal estates, held void, *quoad*, the proceeds from realty - - - - - - - *ib.*

Also a residuary bequest of pure and impure personalty to be given to the poor as the trustees might think fit, must abate, *quoad*, the impure personalty - - - - - - - - - - *ib.*

A bequest of money to establish a fever hospital, and invested by the testatrix in the names of trustees, who executed a deed declaring the trusts in her lifetime, held void - - - - - 150

Legacy towards building a church on certain conditions void - - *ib.*

A gift of money to the Society for Prevention of Cruelty to Animals for the establishment of slaughterhouses far away from the dense population of London, void - - - - - - - - *ib.*

A bequest of £3,000 to a corporation, of which £1,000 was to be expended in erecting a dispensary, and the residue in maintaining it, was held void, although the corporation already possessed land in mortmain whereon a dispensary might be erected - - - - - - - - - - - - - *ib.*

Mortgages of "works, rents, and rates," executed by commissioners for improvement of a town, to secure money borrowed for the purpose of establishing gas and water works, held void - - 151

So was a bequest to a charity of 3½ per cent. consolidated stock in the Metropolitan Board of Works - - - - - - - *ib.*

And shares in the New River Company - - - - - - - *ib.*

Also Bath Navigation shares - - - - - - - - - *ib.*

Likewise a mortgage of borough rates - - - - - - - *ib.*

A bequest of money charged on rates and tolls for improving the navigation of a river, held void - - - - - - - *ib.*

Money invested on mortgage debentures of lands for improving a city or river - - - - - - - - - - - - *ib.*

Navigation shares or on the right to moor chains in the River Thames are real estate within the meaning of 9 Geo. II. c. 26

The debentures of a waterworks company in Form Schedule C to the Companies Clauses Consolidation Act, 1845, charging the undertaking including the town rates with the repayment of money borrowed, held by V.-C. Malins not to be an interest in land within the said statute - - - - - - - - - *ib.*

Railway debentures in the same form given to a charity were held by V.-C. Bacon to be pure personalty and bequeathable - - *b.*

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Debenture stock created pursuant to the Companies Clauses Consolidation Act, 1863, 26 & 27 Vic. c. 118, Part iii. held by the Lords Justices on appeal from the judgment to the same effect of V.-C. Hall, not to be an interest in land within the statute 151

Land purchased by the Royal Society out of the voluntary contributions of the Members, and sold by the Society, could be conveyed to the purchaser without consent of the Charity Commissioners 152

Money borrowed for the improvement of a suburban estate, and secured by an assignment by way of mortgage of a proportion of the rates levied on the occupiers of the estate pursuant to Act of Parliament, held not an interest in land within the statute per V.-C. Bacon - - - - - - - - - - - *ib.*

A policy of assurance bequeathable to a charity, although the companies' assets comprised real estate liable to pay the money insured - - - - - - - - - - - - 153

Generally shares in joint stock companies—

Including Railway Companies - - - - - - - - *ib.*

Gas ,, - - - - - - - -

Canal ,, - - - - - - - -

Dock ,, - - - - - - - -

Mining ,, - - - - - - - -

Are not interests in land within the Charitable Uses Act, unless the share bequeathed to the charity should in the ordinary course of events vest the land specifically in the holder thereof - - *ib.*

A bequest to a charity of - - - - - - - - - 154

the unpaid purchase money on the sale of land - - - *ib.*

or owing on the sale of a growing crop off land - - - *ib.*

or of the future rent of land - - - - - - - - *ib.*

or of the interest due or to become due in respect of a mortgage of land - - - - - - - - - - - - *ib.*

is void - - - - - - - - - - - - - *ib.*

A bequest to a charity of rent of land in arrear is good - - *ib.*

A lease was granted for 31 years at a small yearly rent, but with a premium of £600 payable immediately, which was bequeathed by the lessor to a charity, held an interest in land and void *ib.*

Mr. Justice Pearson held that a bequest to a charity of £100, owing to the testator on mortgage of a wife's life interest in money invested on freehold, was valid; but that a bequest to the charity of £800 and £200, owing to the testator from a widow and her two daughters, and secured to him by mortgage of the wife's life interest and the daughters' remainders in funds invested in freeholds, was void - - - - - - - - - - 155

A bequest of money to be applied wholly in erecting, enlarging, or improving a church, chapel, or building standing or being on land already in mortmain is valid; but the testator must specify

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or indicate the land already in mortmain, on which the money so bequeathed must be expended - - - - - - - 155
The testator must expressly exclude the investment of his bequest in land out of mortmain - - - - - - - - - 156
A bequest for the endowment or maintenance of churches, chapels, schools, hospitals, or other charitable institutions already legally vested in mortmain, is valid - - - - - - - - *ib.*
A legacy to a charity to be invested on land at the discretion of the trustee is valid - - - - - - - - - - *ib.*
A bequest to a charity of money to be invested in the public funds till the same could be invested in land to the trustees' satisfaction was upholden - - - - - - - - - - *ib.*
A bequest of money to be invested in the Funds, and the dividends to be applied in providing a schoolhouse, was upholden - - *ib.*
A bequest of £800 to the Rector for the time being of a parish, the interest thereof to be paid to the trustees for the time being of a certain Mechanics' Institution, to be applied as they should think most advantageous for the instruction and benefit of the members, was held void as tending to a perpetuity, *p.* V.-C. Bacon - - - - - - - - - - - - - 157
A bequest of stock in the Funds for the establishment of a charity declared void - - - - - - - - - - - - *ib.*
Also a bequest of £200 to aid of deaf and dumb to found a chapel for them - - - - - - - - - - - - - *ib.*
Likewise a bequest to a charitable society not possessed of land in mortmain, conditional upon it furnishing land for the object of the charity - - - - - - - - - - - - *ib.*
Also of money to be invested in real securities, with power to vary for investments of a similar description the interest to be paid to certain persons for their lives, and afterwards to pay and transfer the same to the treasurer of a charity - - - *ib.*
The court invalidated the last preceding bequests, because it considered their investment in or upon land was imperative - - *ib.*
A covenant for payment to a charity of a legacy which can only be satisfied out of land or impure personalty cannot be enforced - 159
Where a testator directed his charitable bequest to be paid out of his pure personalty, the specialty creditors who would have exhausted the personal estate, were ordered to be paid out of the real estate - - - - - - - - - - - - *ib.*
Assets were marshalled to enable charitable gifts to be paid out of the pure personalty - - - - - - - - - - *ib.*
Bequests to redeem land tax chargeable on charity lands declared valid, 42 Geo. II. c. 16 - - - - - - - - - - *ib.*
The institutions next hereinafter named are by the several statutes exempted from the operation of the Acts of Parliament preventing or restraining grants or gifts in mortmain - - - *ib.*

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The British Museum, 5 Geo. IV. c. 39, s. 3 - - - - - - 159
The Universities of Oxford and Cambridge and the Colleges of Eton, Winchester, and Westminster, 9 Geo. II. c. 36, ss. 4 and 5 160
Queen Anne's bounty, 43 Geo. III. c. 107 - - - - - - *ib.*
The Foundling Hospital, 17 Geo. II. c. 29 - - - - - - *ib.*
Greenwich Hospital, 10 Geo. IV. c. 25 - - - - - - - *ib.*
St. George's Hospital, 2 Will. IV. c. 38 - - - - - - - *ib.*
The Bath Infirmary, 19 Geo. III. c. 23. *Vide* Maggs *v.* Hodges, 2 Vesey, 52 - - - - - - - - - - - - - *ib.*
The Westminster Hospital, 6 Geo. IV. c. 20 - - - - - - *ib.*
The Royal Naval Asylum, 51 Geo. III. c. 105 - - - - - - *ib.*
The Seamen's Hospital Society, 3 & 4 Will. IV. c. 9 - - - - *ib.*
County Lunatic Asylums, 9 Geo. IV. c. 40, s. 25 - - - - - *ib.*
For the augmentation of small Church livings, 17 Chas. II. c. 3, s. 7, 6 & 7 Vic. c. 37, s. 22 - - - - - - - - - - *ib.*
Poor's houses (union workhouses) 4 & 5 Will. IV. c. 76, s. 21 - - *ib.*
Parsonage houses, 17 Geo. III. c. 53, s. 10; 55 Geo. III. c. 147, s. 12; 7 Geo. IV. c. 66, s. 1 - - - - - - - - - - *ib.*
Erection of new churches, 43 Geo. III. c. 108; 51 Geo. III. c. 115; 58 Geo. III. c. 45; 5 Geo. IV. c. 103, s. 14 - - - - - 161
The Governor and Company of the Bank of England, 5 & 6 Will. and Mary, c. 20, s. 20 - - - - - - - - - - - *ib.*
Royal Exchange Assurance, 6 Geo. I. c. 18, 11 Geo. IV., and 1 Wm. IV. c. 74 - - - - - - - - - - - - - - *ib.*
The London Assurance Company, *ibid.* - - - - - - - *ib.*
The Corporation of the Bedford Level, 15 Ch. II. c. 17 - - - *ib.*
The London and Southampton Railway Company, 4 & 5 Wm. IV. c. 88 - - - - - - - - - - - - - - - *ib.*

CHAPTER III.

THE LAW CONCERNING MINISTERS OF RELIGION.

The rector or vicar of a parish has a freehold estate during his life in his incumbency, including the church, churchyard, rectory or vicarage, glebe and tithes - - - - - - - - - 163
The minister or pastor of a Dissenting church or congregation holds his office at their will, in the absence of a special contract which would govern the tenure of his office - - - - - - *ib.*
The minister of a Nonconformist congregation engaged at an annual salary was holden to have been removable at the will of the church who became dissatisfied with his doctrines - - - *ib.*
Also from a dwelling-house appurtenant to the chapel occupied by the minister in connection with his office - - - - - *ib.*

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The same principle applied to a Nonconformist minister who had holden his office 16 years - - - - - - - - - 164

The District Committee of Wesleyan Methodists have power to suspend a minister of that denomination from his office - - *ib.*

Where a portion only of the trustees of a Nonconformist chapel appointed the minister, he cannot recover his unpaid salary from other trustees, though they joined in signing a notice demanding possession of the chapel from the minister - - - *ib.*

There must be a competent body to elect, and proper notice given, previous to the meeting, to secure a valid appointment of minister of a Nonconformist church - - - - - - - - 165

The court refused in such a case to grant a mandamus to enable the minister to justify his conduct - - - - - - - - *ib.*

To render a resolution for the removal of a minister valid, a proper notice containing the specific charge against him must be given a sufficient time before the meeting at which the resolution should be passed - - - - - - - - - - - *ib.*

The foundation deed alone regulates the doctrines which should be maintained and expounded by the minister of a Nonconformist church - - - - - - - - - - - - - - 166

If the pastor should entertain, and more especially promulgate, opinions differing materially from the doctrines prescribed by the constitution deed, he is liable to be removed by the trustees, or by the church, *p.* V.-C. Hall - - - - - - 167 to 173

The same principle affirmed by Mr. Justice Pearson- - - 174, 175

Any person who should molest, let, disturb, vex, or trouble, or by any other unlawful means disquiet or misuse any preacher duly authorized to preach in any cathedral, church, parish, or district church or chapel of the Church of England, or in any place of worship duly certified under 18 & 19 Vic. c. 81, whether during the celebration of Divine service, or at any other time, or in any churchyard or burial-ground, or any clergyman in holy orders ministering or celebrating any sacrament or any Divine service, rite, or office in any cathedral, church, or chapel, or in any churchyard or burial-ground, should be liable on conviction to a penalty not exceeding £5, or to imprisonment for not more than two calendar months - - - - - - 176

Whosoever should by threat or force obstruct or prevent any clergyman or other minister in or from celebrating Divine service or otherwise officiating in any church, chapel, meeting-house, or other place of Divine worship, or in or from the performance of his duty in the lawful burial of the dead, in any churchyard or other burial-place, or who should strike or offer any violence to or should upon any civil process or under the pretence of executing any civil process arrest any clergyman or other minister who should be engaged in, or to the knowledge of the offender,

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should be about to engage in any of the rites or duties in that section mentioned, or who to the knowledge of the offender should be going to perform the same or returning from the performance thereof, should be guilty of a misdemeanour, and being convicted thereof should be liable to imprisonment not exceeding two years, with or without hard labour, and in addition to or in lieu of imprisonment should, with or without sureties, enter into recognizance to keep the peace and be of good behaviour for not exceeding one year - - - 176, 177

CHAPTER IV.

THE LAW CONCERNING TRUSTEES OF CHARITABLE USES.

Trustees for charitable uses cannot divert the trust estate from the object declared by the founder, or to be inferred from his position and from the law - - - - - - - - - 179

Should the trustees be guilty of diversion, or misapply the trust funds, they may be removed - - - - - - - - - *ib.*

Power given to three surviving trustees of a charity, when by death or otherwise they should be reduced to that number, to appoint three new ones, may be exercised by the sole surviving trustee *ib.*

Power given to fifteen surviving trustees as soon as they should be reduced to that number, to appoint ten new trustees to preserve the original complement, was holden to have been well exercised by seventeen surviving trustees, who had appointed eight new ones - - - - - - - - - - - - - - - 180

Power given to two surviving trustees to appoint new trustees, being inhabitants of the parish where the school was situate, was declared to have been properly executed by the appointment of new trustees not resident in the parish - - - - - - *ib.*

When the foundation deed confines the nomination of the trustees to the heir of the founder, the court cannot in the absence of the heir appoint trustees pursuant to 52 Geo. III. c. 101 - - 181

An elected trustee of a parochial charity having been appointed one of the churchwardens of the parish, who were also trustees *virtute officiorum*, does not vacate his first appointment - - *ib.*

Acts done by a majority of trustees assembled at a meeting properly convened for executing the trusts are valid - - - - - *ib*

Gross misconduct, misapplication of the revenues, and inability to account for or to pay over the income of a charity, are grounds for removal of the trustees - - - - - - - - - *ib.*

Trustees in whom was vested the power of appointing the preacher of a parish were holden to have committed a breach of trust in assigning the power of appointment to the purchaser of the

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property, out of which the annuity for the maintenance of the preacher was payable - - - - - - - - - - 182
Trustees who misapplied the charity fund are removable at the instance of another trustee who dissented from their conduct - *ib.*
Pulling down a chapel and letting the site for building houses is a breach of trust by the trustees - - - - - - - - *ib.*
But trustees may make an inconsiderable deviation from the trust, if its substantial object be preserved - - - - - - *ib.*
Trustees were justified in pulling down an inconvenient and dilapidated market-house and erecting a new one on a more eligible site in the town - - - - - - - - - - - *ib.*
Difficulty in many cases of ascertaining the person or persons in whom was vested the power to appoint new trustees - - 183
Necessitated frequent application to the Court of Chancery for its direction - - - - - - - - - - - - - - *ib.*
Act to remedy the evil, 13 & 14 Vic. c. 28 - - - 184, 185, 186
Where freehold, leasehold, copyhold, or customary property in England or Wales had been, or thereafter should be, acquired by any congregation, society, or body of persons associated for religious purposes, or for the promotion of education, as a chapel, meeting-house, or other place of religious worship, or as a dwelling-house for the minister, with offices, garden or glebe for his use, or as a school-house, with masters' houses, garden and playground, or as a college, academy, or seminary with or without grounds, &c., and whenever the conveyance of such property had been or might be taken to a trustee or trustees, &c., such conveyance should not only vest the property in the party or parties named therein, but also in their successors in office, jointly with the old trustees, or solely in the successors, if there were no surviving trustee appointed in the manner provided in such conveyance, and if no mode of appointment be therein provided, or should have lapsed, then in such manner as should be agreed upon by such congregation, society, or body of persons, upon the same trusts as previously existed, and that without any transfer or conveyance, s. 1 - - - *ib.*
Provision for preserving the rights of and payments to lords of manors where the property should be of copyhold tenure, s. 2 -
To preserve evidence of every such appointment of new trustee or trustees, &c., the same should be made to appear by some deed under the hand and seal of the chairman of the meeting at which such appointment should be made, and should be executed in the presence of such meeting, and should be attested by two or more credible witnesses, and be in the form or to the like effect of the schedule to the Act, s. 3 - - - - - *ib.*

APPENDIX.

The Toleration Act, 1 William and Mary, c. 18 - 189, 190, 191, 192, 193, 194

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25 Edward III. stat. 1. c. 1.
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15 Richard II. c. 5.
2 Henry IV. c. 15.
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27 Henry VI. c. 5.
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23 Henry VIII. c. 10.
23 Henry VIII. c. 11.
24 Henry VIII. c. 12.
25 Henry VIII. c. 19.
26 Henry VIII. c. 1.
26 Henry VIII. c. 13.
27 Henry VIII. c. 28.
28 Henry VIII. c. 10.
31 Henry VIII. c. 13.
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37 Henry VIII. c. 17.
1 Edward VI. c. 12.
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THE LAWS CONCERNING RELIGIOUS WORSHIP.

CHAPTER I.

THE LAWS CONCERNING RELIGIOUS WORSHIP.

During the Middle Ages, *i.e.*, from the fifth to the fifteenth century, the Church of Rome (which had absorbed the previous paganism of the Roman Empire) was nearly omnipotent in the central and southern nations of Europe. The successive Pontiffs, taking advantage of the overwhelming influence of the Papacy over the then mind of Europe, gradually, but steadily, and at last rapidly, extended their pretensions and power, not only in the domain of religion and ecclesiastical polity, but far into the secular affairs and lay government of kingdoms. Not only did they exercise the exclusive appointment of Bishops and other ecclesiastical dignitaries throughout Christendom, and compel their munificent and stately support by onerous and oppressive requisitions and services, but they at last arrogated the right of sanctioning, confirming, and vetoing the succession, choice, and coronation of monarchs and princes. They also claimed jurisdiction of civil as well as

religious complaints and causes which they tried and punished in the Ecclesiastical Courts.

In short, the Pontiffs of the twelfth and thirteenth centuries claimed the exclusive religious dominion of Europe, and a considerable share in its secular government. Gregory VII., Innocent III., and Boniface VIII. pushed these pretensions so far as to draw the opposition and rebellion of Kings Henry II. and Edward I. of England, and Philip the Fair of France.

William the Conqueror first divided and separated the ecclesiastical from the civil tribunals, and prohibited the Bishops adjudicating on spiritual causes in the Court of the Hundred. In the reign of Stephen the Ecclesiastical Courts alone entertained religious offences. But Henry II., in the celebrated Constitutions of Clarendon—so called because passed in a General Council of the Barons and Prelates of the Realm held in that town in A.D. 1164—was the first European monarch who distinctly and firmly assigned the respective limits of the powers and privileges of the lay and ecclesiastical tribunals. These prescribed the following sixteen articles, *vide* Fitz-Stephen, p. 33; Hume, vol. i., pp. 279, 280:—

1. That all suits concerning the advowson and presentation of churches should be determined in the Civil Courts.

2. That the churches belonging to the King's see should not be granted in perpetuity without His Majesty's consent.

3. That clerks accused of crime should be tried in the Civil Courts.

4. That no person, especially no clergyman of rank, should depart the kingdom without the King's licence.

5. That excommunicated persons should not be bound to give security to continue in their places of abode.

6. That lay persons should not be accused in the Spiritual Courts, except by legal and reputable prosecutors and witnesses.

7. That no chief tenant of the Crown should be excommunicated, nor his lands be placed under interdict, except with the King's consent.

8. That all appeals in spiritual causes should be carried from the Archdeacon to the Bishop, from the latter to the Archbishop, and from him to the King, and should be carried no further except with the King's consent.

9. That if any lawsuit arose between a layman and clergyman concerning a tenant, and it was disputed whether the land was a lay or ecclesiastical fee, it should first be determined by the verdict of twelve lawful men to which tenure it belonged, and if found to be a lay fee, the cause should be determined in the Civil Courts.

10. That no inhabitant in demesne should be excommunicated for non-appearance in a Spiritual Court till the chief officer of the place where he resided should be consulted, in order to compel him by civil authority to give satisfaction to the Church.

11. That the Archbishops, Bishops, and other spiritual dignitaries should be considered as Barons of the Realm, should possess the privileges and be subject to the burthens of that rank, and should be bound to attend the King in his great councils, and assist at all trials till the sentence either of death or loss of members be given against the criminal.

12. That the revenue of vacant sees should belong to the King; the chapter, or such of them as he pleases to summon, should sit in the King's chapel till they should make the new election with his consent, and that the Bishop-elect should do homage to the Crown.

13. That if any baron or tenant *in capite* should refuse to submit to the Spiritual Court, the King should employ his authority in compelling him to make such submission; if any of them should throw off his allegiance to the King, the prelates should assist His Majesty with their censures in reducing them to obedience.

14. That goods forfeited to the King should not be protected in churches or churchyards.

15. That the clergy should no longer pretend to the right of enforcing payment of debts contracted by oath or promise, but should leave those suits, as well as others, to the determination of the Civil Courts.

16. That the sons of villeins should not be ordained clerks without the assent of their lords.

These constitutions continued till the year 1176, when at a great council held at Northampton, they were so modified that the clergy should not be brought to trial before the Temporal Courts for any offences, except against the Forest Laws, and that no bishopric or abbey should be kept in the King's hands longer than a year.

Innocent III., who became Pope in A.D. 1207, was endowed with a lofty genius and an ambitious and enterprising spirit. He advanced the already overgrown power and pretensions of the Court of Rome to an unjustifiable extent. He, in derogation of the sovereignty of King John of England, nominated Cardinal Langton, an Englishman, but educated abroad, and a servile instrument of the Romish See, to the Primacy of England, then vacant by the death of Archbishop Hubert. The King rebelled against this usurpation, and took violent measures against the Pope's authority in England. The Pontiff retaliated by placing his interdict on the King's dominion, which was a deprivation of the right of religion by the services of the Popish clergy. The King replied with a confiscation of the estates of the clergy who obeyed the Pope's interdict, and banished the prelates. The interdict having failed of the desired effect, the Pope resorted to the strong remedy of excommunication. John had by his want of capacity and courage, and by his odious and oppressive acts and encroachments upon the English nobility, alienated their loyalty, and they openly expressed their discontent with his rule and conduct. The prelates and other Romish hierarchy more loudly condemned the King's violent proceedings. John now perceived his perilous situation, and solicited a conference with the Primate Langton. The King offered to acknowledge Langton as Primate, to submit to the Pope,

to restore the banished clergy and compensate them for the deprivation of their estates. Langton perceiving the King's strait, became arrogant and overbearing in his demands, whereupon the conference was broken off. Innocent was now enraged and fulminated his last punishment by deposing the King and absolving his subjects from their oaths of allegiance and fidelity to him. The Pope solicited Philip, King of France, to carry the sentence of deposition into effect, and promised him the Crown of England in return for his services. The latter prepared a formidable expedition into England, and John assembled a numerous army at Dover to resist the invasion. Innocent, who was endowed with much sagacity and prudence, took advantage of the situation and sent his Legate, Pandolf, to negotiate with John for his submission. The stratagem was successful, and the King submitted to all the conditions which Pandolf imposed upon him, viz., to do homage to the Pope, acknowledge Langton as Primate, restore the exiled clergy, and compensate them for their losses. John so far humiliated himself as to promise homage to the Pope by all the submissive rites of a vassal to his superior lord according to feudal custom and law, and agreed to hold the sovereignty of his kingdom as feudatory of Innocent and his successors, by the annual payment of seven hundred marks for England and three hundred marks for Ireland. The last stipulation of the King was, that if he or any of his successors should not fulfil the terms of the compact, the Crown of England should be thence forfeited, unless after admonition due reparation should be made.

The pusillanimous and degrading conduct of the King in his abject submission to the Court of Rome, together with his tyrannical demeanour to the nobility, exasperated

the nation in the highest degree. The consequence was a rebellion headed by the Barons, who compelled the King to grant the Great Charter of their liberties.

Edward III., who was a prince of much sense, courage, and spirit, after attaining his majority, withheld payment of the annual tribute stipulated by King John to the Court of Rome. The Pope threatened to cite the King for his refusal, but he laid the matter before his Parliament, and they unanimously supported the King's refusal, and declared that John could not, without the consent of the nation, subject his kingdom to a foreign Power, which was implied in his abject compact with Pandolf, the Pope's Legate. During this reign was passed the Statute of Provisors, 25 Edw. III., stat. 1, rendering it penal to procure any presentations to benefices from the Court of Rome, and thenceforth securing those rights to their legitimate patrons. 27 Edw. III., stat. 1, c. 1, declared every person outlawed who should carry any cause by appeal to the Court of Rome. The encroachments of the Pope were further restricted in the succeeding reign, for 16 Richard II. c. 5, called the Statute of Premunire, subjected every person who should bring Papal bulls for translation of Bishops and other ecclesiastical purposes into England, to penalties and imprisonment. These statutes suppressed the Pope's usurpation of patronage, which had much impoverished the Kingdom and Church of England during nearly two centuries.

The lethargic and slothful condition of the European mind during the long ascendancy of the Church of Rome and its extravagant pretensions is remarkable, but a break in its monotonous silence and submissiveness was inevitable. This at length arose in John de Wiclif, who is styled "the Morning Star of the Reformation." He was

Master of Baliol College, Oxford, and Rector of Lutterworth, in Leicestershire. As early as the year 1356, Wiclif inveighed against the tyrannical powers of the Pope, which he continued to do till 1382. Wiclif translated the Bible into English, and published his version, which was well received, and used by his followers. Being at length prostrated by persecution and suffering, he ceased his active hostility against the Romish Church, and died in 1384. The sect or party which imbibed and propagated the doctrines of Wiclif were called Lollards, and they multiplied in the kingdom. The crime of heresy does not appear in the previous history of England to have had much prominence, or to have received paramount attention from the authorities. The old laws of the country on the subject of religion were tolerant and mild. Extreme measures and sanguinary punishment for heterodoxy were rare and almost unknown. The King and Barons were more concerned for the preservation of their temporal power and privileges than zealous for the orthodoxy of their subordinates. It was reserved for a fanatical hierarchy to aggravate heresy, and to eradicate it by "iron and blood." This was accomplished by the statute 2 Hen. IV. c. 15, which after reciting that the "Catholic faith and Holy Church had been maintained in England without disturbance by perverse doctrine and heretical opinions, openly preached and taught by a new sect (evidently alluding to the Lollards), and in order that this wicked sect's preachings and doctrines should be utterly destroyed, enacted that no person presume to preach anywhere openly or privately without the licence of the diocesan of the place, and that no person should anything preach, hold, or teach openly or privately, or make or write any book contrary to the Catholic faith or determination

of the Holy Church, or hold schools or conventicles for the dissemination of the new doctrines, or favour the preachers or teachers thereof, and that all persons having any heretical books or writings should deliver them to the diocesan in forty days, who was empowered to cause the apprehension of any offender, and detain him in prison till he should be cleared of the charge against him, or abjure his heretical opinion within three months. On conviction of heresy, the diocesan should detain the offender in prison, and fine him according to the gravity of his offence; and finally, if the person so convicted should refuse to abjure, or relapse after abjuration, he should be made over to the sheriff of the county, or mayor and bailiff of the nearest town, who were ordered to set such offender in a high place to be burned, that such punishment might strike in fear the minds of other people and deter them from all such heresy."

The activity and zeal of the Lollards was great, and they infected many of the nobility with their doctrines. The most conspicuous of these was Sir John Oldcastle—Lord Cobham—who had distinguished himself as commander of an English army in France. He was a person of high character, and endowed with much genius and learning. Arundel, the Primate, selected Lord Cobham for punishment as leader of the Lollards, and thus strike at the sect. He applied to the King, Henry V., for permission to proceed against Lord Cobham, but the King, who was of a magnanimous disposition, and much esteemed his lordship for his high military talents and his services to the nation, was adverse to violent measures. The King recommended the Primate to use expostulation, and by reasoning to restore the delinquent to the Catholic faith; but peaceable proceedings failed of

their object, and the King at length consented to a prosecution. Cobham was indicted for his heresy, and by the Court which tried him, consisting of the Primate and the Bishops of London, Winchester, and Saint David's, was condemned to the flames. Lord Cobham escaped from the Tower before his execution, and raised an insurrection, which he led against the King, but his design was frustrated by the King's prompt measures. Many of the Lollards were tried and executed. Lord Cobham fled, but, after four years of compelled retirement, he was found and hanged, and his body was burnt on the gibbet in execution of the sentence pronounced against him as a heretic. The consequence of this rebellion was the passing of the Act 2 Hen. V. c. 7, which enacted that whosoever was convicted of Lollardy before the Ordinary, besides suffering capital punishment, should also forfeit his lands and goods to the King, and that the Chancellor, Treasurer, Justices of the two Benches, Sheriffs, Justices of the Peace, and Chief Magistrates of every city and borough, should make oath to use their utmost endeavour to extirpate heresy. But this same Parliament, when the King demanded of them supply, entreated him to seize all the ecclesiastical revenues and apply them for the service of the Crown. Inconsistency like this is invariably found in the proceedings of kings and peoples towards those whom they consider heretics or religious foes.

The Star Chamber, celebrated in subsequent reigns for its tyranny and sanguinary cruelty, was confirmed by Act of Parliament in the beginning of the reign of Henry VII., for the punishment of State offences; as was the equally cruel and oppressive Court of High Commission, established in the reign of Elizabeth, for the suppression of heresy.

Both courts revelled in sanguinary glory during the

reigns of intervening monarchs; but the Long Parliament abolished the infamous tribunals, and thenceforth their iniquities are found in history alone.

The Papal yoke was much relaxed in previous reigns, but it was reserved for Henry VIII. to effect the final rupture, and substitute himself instead of His Holiness, Protector, and Supreme Head of the Church and clergy of England. The King, in conjunction with the Great Council of the nation, passed an Act (24 Hen. VIII. c. 12), prohibiting all appeals to the Pontiff in causes relating to matrimony, divorces, wills, and other matters cognizable in the Ecclesiastical Courts, which were thereby declared to have been dishonourable to the kingdom, by subjecting it to a foreign jurisdiction, and productive of great expense, delay, and failure of justice. Subsequent Acts of Parliament abolished all payments made to the Apostolic Chamber, and all provisions, bulls, and dispensations. Monasteries were subjected to the visitation and government of the King alone. The punishment for heresy was moderated, and the Ordinary was prohibited from imprisoning or trying any person accused of such offence without presentment by two lawful witnesses; and to deny the Pope's authority was made justifiable. Bishops were to be appointed by a *congé d'elire* from the Crown, or if the Dean and Chapter refused, by letters patent, and no recourse was to be had to the Pope for palls, bulls, or provisions. The law previously made against the payment of annates, or firstfruits, was confirmed. The King and his Parliament compelled the submission of the clergy to the right of the King alone to assemble convocations, who were to enact no new canon without the King's consent, and he was to appoint 32 commissioners to examine the old canons and abrogate such of them as should be found

prejudicial to the Royal authority. Appeals were established from the Bishop's Court to the King in his Chancery. Convocation confirmed these laws, and voted that the Pope had by the law of God no more jurisdiction in England than any other foreign Bishop, and that the authority which he and his predecessors had there exercised was by usurpation alone, and by the sufferance of the English monarchs. The Bishops took out new commissions from the Crown, in which all their spiritual and episcopal authority was expressed to have been derived ultimately from the monarch and to be dependent on the Royal goodwill. The statute 26 Hen. VIII. c. 1, vested the King with the title of the only Supreme Head on earth of the Church of England, and granted him the power "to visit and repress, redress, reform, order, correct, restrain, or amend all errors, heresies, abuses, contempts, and enormities, which fell under any spiritual authority or jurisdiction." Parliament granted the King all the annates and tithes of benefices which had theretofore been paid to the Court of Rome. The statute 28 Hen. VIII. c. 10, enacted that whoever maintained the authority of the Bishop of Rome—the Pope—by word or writ, or endeavoured in any manner to restore it in England, was subjected to the penalty of premunire, viz., his goods were forfeited, and he would be an outlaw of the Church. Any person who held any office, ecclesiastical or civil, or received any grant or charter from the Crown, and yet refused to renounce the Pope by oath, was declared guilty of high treason. Henry VIII., by several Acts of Parliament abridged the previous rights and powers of the clergy. 23 Hen. VIII. c. 1, abolished the privilege of clergy to every one below the degree of a sub-deacon in petty treason, murder, and felony; and the right of

sanctuary in high treason by 26 Hen. VIII. c. 13; and in murder, felony, rape, burglary, and petty treason, by 32 Hen. VIII. c 12.

From this period—1538—a change came over the ecclesiastical proceedings of the King. Although he still repudiated the pretensions of the Court of Rome, he was determined to be the real, as well as nominal, supreme head of the Church of England, and would exercise his authority in the same spirit as the Pope had done. In 1539 was passed the Bloody Statute, 31 Hen. VIII. c. 14, establishing six articles to be the rule of faith of the Church of England, viz.: 1. The existence of the Real Presence in the Holy Sacrament, or the doctrine of Transubstantiation. 2. Communion in one kind. 3. The perpetual obligation of the clergy to vows of chastity. 4. The utility of private masses. 5. Celibacy of the clergy. 6. The necessity of auricular confession. Denial of the first article, or the doctrine of Transubstantiation, subjected the offender to death by burning, and to the same forfeitures as in case of high treason, and no abjuration was admitted. The denial of any of the other four articles, though recanted, was punishable by forfeiture of the offender's estate and imprisonment during the King's pleasure. Perseverance in heretical opinion, or a relapse after recantation, was declared to be felony and punishable with death. The marriage of priests was subjected to the same punishment. Abstinence from confession and from receiving the Eucharist at the accustomed times subjected the offender to fine and imprisonment during the King's pleasure. Perseverance in the offence after conviction was punishable by death and forfeiture as in felony. The King was authorized to appoint Commissioners for inquiring into heresy and irregular religious practices, but the offences

were triable by jury. The King, with the sanction of his Commissioners, composed and published a religious creed, entitled "The Institution of a Christian Man," to secure uniformity of doctrine in the Church of England, which was voted by Convocation to be the standard of orthodoxy. This compilation was a heterogenous mixture of Catholic and Protestant articles of faith. With that inconstancy which was the principal characteristic of the King, he soon afterwards published a new book, which he styled "The Erudition of a Christian Man," containing another code of faith for the Church of England which differed considerably from the first, but in both Transubstantiation and passive obedience to the monarch were leading doctrines. The statute 34 & 35 Hen. VIII. c. 1, was passed to enforce this code of faith on the nation. It enacted that any spiritual person who preached or taught contrary to the doctrine contained in the King's book, "The Erudition of a Christian Man," or contrary to any doctrine which he should thereafter promulgate, should on the first conviction be admitted to renounce his error; on the second he must carry a fagot, the refusal of which, or a third conviction of the heresy, subjected the offender to death by burning. The laity were amenable to the same proceedings, but their punishment after a third conviction was forfeiture of goods and perpetual imprisonment. Indictments must have been preferred within a year of the offence, and the accused was entitled to adduce evidence by witnesses, or otherwise, in his defence. The Bloody Statute, with its six articles, was continued and confirmed, and it was declared the King might thereafter at his pleasure alter that Act or any provision in it. The statute 37 Hen. VIII. c. 17, acknowledged the King to have been always, by

the word of God, Supreme Head of the Church of England, and that Archbishops, Bishops, and other ecclesiastical persons had no manner of jurisdiction but by his Royal mandate, and declared that to the King alone and such persons as he should appoint, were given from on high full power and authority to hear and determine all manner of causes ecclesiastical, and to correct all manner of heresies, errors, vices, and sins whatsoever. Henry VIII. thus constituted himself the oracle of Divine Truth, and his revelations alone were to form the religious creed of the Church and people of England.

In the first year of the reign of Edward VI. was passed an Act repealing the Bloody Statute, with its six articles of faith, and all the statutes of previous reigns on the subject of heresy. The Holy Sacrament was directed to be administered to the people in both kinds. A new Book of Common Prayer was also composed and published for the use of the people, in the English language, instead of the previous Latin Mass Book, which was understood by the clergy and learned alone. It differed chiefly from the old by the addition of the Litany, which was nearly the same as the present service.

The next Parliament ordered the new Book of Common Prayer to be used by all ministers in the celebration of Divine service. Laws were also passed reviving the old enactments respecting abstaining from the consumption of flesh, and abolishing every restriction on the marriage of priests.

The beneficent minds of Archbishop Cranmer and of Bishops Hooper, Coverdale, Latimer, and Ridley, and other friends of the Protestant Reformation, are discernible in all the legislation of this reign upon religion. The same spirit is visible in the Forty-two Articles of Faith

published in 1552 by authority of the King, which differed little from the Thirty-nine Articles now in the service of the Church of England.

The reign of Queen Mary completely changed the laws made in the previous reign respecting religion. The Queen was an extreme Romanist, and her marriage to Philip of Spain, where the Inquisition was executed in its severest form, only intensified her cruel bigotry. In the Parliament which assembled in October, 1553, the Act 1 Mary, c. 1, repealed all the statutes of the last reign respecting religion. The statute 1 Mary, c. 2, repealed all the statutes of the last reign respecting the administration of the Holy Sacrament in both kinds, the election of Bishops, the uniformity of public worship, the marriage of priests, the abolition of missals, the removal of images, and the observance of fast days. Divine service was directed to be conducted in the form used in the last year of the reign of King Henry VIII. Archbishop Cranmer and Bishop Ridley were sent to the Tower, and afterwards burned to death as heretics. Gardiner, Bonner, Tunstal, Day, and Heath were restored to their bishoprics. All the Protestant Prelates were expelled the House of Peers and deprived of their sees. In 1554, after the Queen's marriage, was passed the Act of Parliament, 1 & 2 Philip and Mary, c. 6, repealing all statutes, articles, and provisions made against the See Apostolic of Rome since the 20th year of the reign of King Henry VIII. 1 & 2 Philip & Mary, c. 8, restored all spiritual and ecclesiastical possessions and hereditaments conveyed to lay persons and corporations. A tribunal, little less tyrannical and cruel than the Spanish Inquisition, for the trial and punishment of heretics was now established. Their Majesties appointed a Commission, consisting of 21

persons, to extirpate heresy, of whom three formed a quorum. The Commission recited that since many false rumours were published among the subjects, and many heretical opinions were spread among them, the Commissioners were directed to inquire into all such by presentments, by witnesses, or any other political way they could devise, and to search after all heresies—the bringers-in, the sellers, the readers of all heretical books; to examine and punish all misbehaviours or negligences in any church or chapel; to try all priests that did not preach the Sacrament of the Altar; all persons that did not hear Mass, or come to their parish church to service, that would not go in processions, or did not take holy bread or holy water, and if they found any that did obstinately persist in such heresies they were to commit them into the hands of their Ordinaries, to be punished according to the spiritual laws. Full power was given to the Commissioners to proceed in execution of their authority, as their discretion and consciences should direct them, and to use all such means as they would invent for searching the premises of suspected persons, and empowering them to call before them such witnesses as they pleased, and to force them to make oath of all such things as might discover what they sought after.

To approximate the practice of the Inquisition, Royal letters were written to the authorities enjoining them "to put to the torture such obstinate persons as would not confess, and there to order them at their discretion." Spies and informers were employed by the authorities to discover heretics according to the Spanish Inquisition. Instructions were communicated to all justices of the peace "that they should call secretly before them one or two honest persons within their circuits, or more at their

discretion, and command them by oath or otherwise that they should secretly learn and search out such persons as should evil behave themselves in church, or idly or should openly despise by words the King's or Queen's proceedings, or go about to make any commotion or tell any seditious tales or news. And that the same justices should upon their examination, punish the offenders according as their offences should appear upon the accusement and examination by their discretion either by open punishment or by good abearing.

The Commissioners appointed by Philip and Mary, in execution of their mission, devised more speedy and summary means of maintaining religious orthodoxy than did His Catholic Majesty's Inquisition. They published and carried into effect a proclamation "That whosoever had any books of heresy, treason, or sedition, and should not presently burn them without reading them or showing them to any other person, should be esteemed rebels and be without any further delay executed by martial law." In the number of persons who suffered death by fire for heresy were five Bishops, twenty-one clergymen, eight lay gentlemen, eighty-four tradesmen, one hundred husbandmen, fifty-five women, and four children. Innumerable other persons suffered imprisonment, fines, and confiscation during this reign.

The succession to the throne of Queen Elizabeth, on the death in 1558 of her sister Mary, was hailed by the English nation, who were sickened at and revolted against the religious persecutions and sanguinary proceedings of the last reign. Elizabeth instructed her Ambassador to notify her accession to the Pope, but the latter replied that England was a fief of the Holy See, and that Elizabeth should not have assumed the Crown without His Holiness's

sanction; but if she would renounce all pretensions to the throne, and make entire submission to His Holiness, she would experience the greatest leniency compatible with the dignity of the Apostolic See. The Queen thereupon recalled her Ambassador, and became the more resolute to sever all connection with the Court of Rome.

Elizabeth issued her Royal Proclamation against religious preaching without her special licence, and ordered a great part of the Church service—the Litany, the Lord's Prayer, the Creed and the Gospels—to be read in the English language, and that all the churches of the nation should conform to the practice of her own chapel. She also forbade the elevation of the Host. In consequence, the Prelates of the realm refused to officiate at the Queen's Coronation, and the Bishop of Carlisle was, with difficulty, induced to perform the ceremony. The first Bill introduced to Parliament suppressed the monasteries erected in the last reign, and restored to the Queen the tenths and firstfruits. The statute 1 Eliz. c. 1, annexed the supremacy of the English Church to the Monarch, in whom was vested all spiritual power and authority in the British Realm. The Sovereign was empowered, without the concurrence of Parliament or Convocation, to repress all heresies, establish or repeal all canons, alter any point of discipline, and ordain or abolish any rite or ceremony. In determining heresy, the Monarch was only limited to such doctrines as had been so adjudged by the authority of Scripture, by the first four general councils, or by any general council which followed the Scripture as their rule, or to such other doctrines as should thereafter be denominated heresy by Parliament or Convocation.

The Sovereign was authorized to appoint Commissioners, either lay or clerical, to carry out this Act, on which was

founded the Court of Ecclesiastical Commission, celebrated in this and subsequent reigns for its despotic and cruel proceedings. All officers, ecclesiastical, civil and military, were required to take oath of the Queen's supremacy. Whosoever should refuse or deny Her Majesty's headship, or should attempt to deprive her of the prerogative, should forfeit on the first conviction all his goods and chattels; on the second he should suffer the penalty of premunire; and the third offence was treason. The statute 1 Eliz. c. 2, revived and confirmed all the statutes passed in the reign of Edward VI. respecting religion.

The Crown was vested with the sole and unfettered power to appoint Bishops, and on vacancy of a see, to seize the temporality and to bestow on the succeeding Bishop an equivalent on the impropriation. All bishops and incumbents were prohibited alienating their revenues, and from granting leases longer than 21 years, or during three lives. Every clergyman refusing to use Edward VI.'s Book of Common Prayer was ordered to be punished for his first offence with forfeiture of one year's profit of his benefice, and six months' imprisonment; for the second, with one year's imprisonment and deprivation of his benefice; for the third, with deprivation and imprisonment for life. Every person speaking against the Service Book, or causing any other than the prescribed forms to be used in any church, chapel, or place in the performance of prayer, or the administration of the Sacrament, was subject to a penalty of one hundred marks for the first offence, four hundred marks for the second, and to forfeiture of goods and imprisonment for life for the third offence. A fine of one shilling was also inflicted on every person absent from his parish church on Sunday or holiday without just cause.

The Bishops were now required to take the Oath of the Queen's Supremacy, but all excepting Kitchin, of Llandaff, refused. The recusant prelates were Heath, Archbishop of York; Bonner, Bishop of London; Thirleby, of Ely; Bourn, of Bath and Wells; Bain, of Lichfield; White, of Winchester; Watson, of Lincoln; Oglethorpe, of Carlisle; Tuberville, of Exeter; Poole, of Peterborough; Scott, of Chester; Pates, of Worcester; Goldwell, of Saint Asaph; Tunstal, of Durham, and three Bishops-elect, all of whom were deprived of their sees. There were at this time 9,400 beneficed clergymen in England, all of whom took the Oath of the Queen's Supremacy, excepting the 14 Bishops, the three Bishops-elect, six Abbots, 12 Deans 12 Archdeacons, 15 Heads of Colleges, 50 Prebendaries, and 80 Rectors, who alone lost their benefices. The newly-appointed Bishops revised the Articles of Religious Faith for the English Church, which were subsequently adopted by Convocation. The Articles were reduced from 42 to 39. A further revision was made in 1571, but with unimportant change, and they were now for the first time subscribed and set forth by Convocation in the English language as well as in Latin. The statute 13 Eliz. c. 12, made it imperative on the beneficed clergy to subscribe the Articles.

Bishop Coverdale, deprived of his see in the previous reign, retired to Geneva—then the home of the Protestant Reformers. During his residence there, Coverdale prepared and published a new English version of the entire Scriptures. This supplanted the previous version of Archbishop Cranmer with the English Puritans and Scotch Presbyterians, and retained its supremacy till the authorized translation, which was the chief result of the Hampton Court Conference in the reign of James I.

The statute 5 Eliz. c. 1 (1563), enjoined the taking of the Oath of the Queen's Supremacy by every person entering into holy orders, every schoolmaster, barrister, bencher, attorney, officer of any Court of Justice, and by every Member of the House of Commons, the refusal of which, or the upholding of the jurisdiction of the Pope, was punishable with the pains of premunire for the first offence; the second conviction was punishable like treason.

The statute 13 Eliz. c. 2, passed after the Pope had excommunicated the Queen, declared it high treason to obtain or put in use any Bull from Rome, or to receive absolution thereunder, and misprision of treason to conceal the offer of any such Bull; and to bring into the realm any token or tokens, thing or things called or named *Agnus Dei*, or any crosses, pictures, beads, or such like vain and superstitious things, from the Bishop or See of Rome was punishable with premunire. 13 Eliz. c. 3, passed to prevent Roman Catholics residing abroad, enacted that any of the Queen's subjects leaving the realm without her licence, and not returning within six months after proclamation, should forfeit all their goods and the profits of their land during their life. The statute 23 Eliz. c. 1, enacted that all persons pretending to any power of absolving the subjects from their obedience to the Queen or practising to withdraw them to the Romish religion, and all subjects so absolved or withdrawn, were guilty of high treason; their abettors or concealers were declared guilty of misprision of treason; the saying of mass was punishable with a year's imprisonment, and a fine of two hundred marks; the hearing of mass with a year's imprisonment and one hundred marks; and every person refusing or neglecting to attend his or her parish church on Sunday and holiday without just cause, to a penalty of

£20 for every month. 27 Eliz., c. 2, declared that all Jesuits and other Romish priests whosoever made or ordained out of England, or coming into or remaining in the kingdom, and all English subjects educated in any foreign college of Jesuits or other seminary of Romish priests, not returning home on proclamation and taking the Oath of Supremacy, should be deemed traitors, and the receivers of Romish priests so coming from abroad felons, without benefit of clergy. Every person sending money to foreign Jesuits or priests was subjected to the pains of premunire, and no person should send his or her child abroad without the Queen's licence under a penalty of £100. In 1587 an Act was passed declaring null and void every conveyance made by Popish recusants to avoid the penalties imposed by the Act of 1581; and by 35 Eliz. c. 2, all persons above 16 years of age being Popish recusants were ordered within 40 days to repair to their usual place of dwelling, and forbidden for ever after, without licence from the Bishop of the Diocese, or Deputy-Lieutenant of the county, to go five miles from thence, on pain of forfeiture of their goods and the profits of their lands during life. The preceding statute was principally directed against Roman Catholics, but 35 Eliz. c. 1, entitled "An Act to retain Her Majesty's subjects in obedience," was aimed at Protestant Nonconformists. It enacted that all persons above the age of 16 years who should for a whole month refuse to attend service according to law, or should attend unlawful conventicles, or should persuade others to dispute the Queen's authority in matters ecclesiastical, should be sent to prison and there to remain until they should openly conform and submit themselves, and that all offenders convicted and not conforming and submitting within three months

should abjure the realm, and should, if they returned, be put to death as for felony without benefit of clergy.

James, King of Scotland, ascended the English throne on the death of Elizabeth in 1603. The Protestant reformers entertained high anticipations from the accession of James, who had been educated in the Presbyterian Church of Scotland, of which he was a member. A petition was presented to the King, on his journey to London, called the Millenary, by reason of its having been subscribed by a thousand ministers of religion, which was as follows :—

1. In regard to the Church service: "That the Cross in baptism, the interrogatories to infants, baptism by women and confirmation may be taken away, that the cap and surplice may not be urged, that examination may go before the Commissioners, that the ring in marriage may be dispensed with; that the service may be abridged, and Church songs and music moderated to better edification; that the Lord's Day may not be profaned, nor the observation of other holidays strictly enjoined; that ministers may not be charged to teach their people to bow at the name of Jesus; and that none but canonical Scriptures be read in the Church."

2. In regard to ministers: "That none be admitted but able men that may be obliged to preach on the Lord's Day; that such as are not capable of preaching may be removed or obliged to maintain preachers; that non-residence be not permitted; that King Edward's statute for the lawfulness of the marriage of the clergy be revived, and that ministers be not obliged to subscribe, but according to law to the Articles of Religion and the King's supremacy only."

3. In regard to benefices: "That Bishops leave their commendams; that impropriations annexed to bishoprics and colleges be given to preaching incumbents only; and that lay impropriations be charged with a sixth or a seventh part for the maintenance of a preacher."

4. In the matter of discipline: "That excommunication and censure be not in the name of lay chancellors, &c.; that men be not excommunicated for twelvepenny matters, nor without consent of their pastors; that registrars, and others having jurisdiction, do not put their places out to farm; that sundry Popish canons be

revised; that the length of suits in the Ecclesiastical Courts may be restrained; that the oath *ex officio* be more sparingly used, and licence for marriage without banns be more sparingly granted."

The King in the following year summoned a conference consisting of eight Bishops and four Deans to represent the Established Church of England, and four ministers of religion on behalf of the Reformers, at Hampton Court Palace, to consider the Millenary Petition. The King presided over the conference, assisted by his Privy Council. The only fruit of the deliberation was some amendment of the Liturgy, and the appointment of a Committee of Divines to translate the Bible into the English language. The result of the latter was the fine Anglo-Saxon Bible of King James's reign; which, during near three centuries has been the admiration of the civilized world, and its melodious and impressive sentences have been pronounced by the English race in every quarter of the globe.

Charles I. succeeded to the British throne on the death of his father, in March, 1625. The Protestant Reformers expected countenance from the King, but his marriage to Henrietta, daughter of the King of France, and a Romanist, and the influence of his Primate, Laud, dispelled their illusion. The Church Service was altered to the verge of Popery, and the Church of England became Romish in all but name; even advances were made for a union with Rome, which was prevented solely by the uncompromising spirit of the Papal Court. The despotic proceedings of Charles in civil affairs, particularly in levying public taxes without the consent of Parliament, and the cruel persecutions of Laud, provoked opposition in the Senate, and at length begot a rebellion in the nation, which was headed

by the Earls of Essex and Northumberland, Warwick and Denbigh among the Peers, and by Sir Harry Vane, John Hampden, John Pym and Oliver Cromwell in the Commons. The Long Parliament abolished the Courts of Star Chamber and High Commission. The conquest of the King by the Parliament was followed by the severance of the Church of England from the State, and the adoption of the Presbyterian Church in its stead. The last had to give way to Independency under the supremacy of Cromwell, who was elected Lord High Protector of the Realm. The result of the King's overthrow and the success of the Parliamentary party was comparative freedom of speech and worship throughout the kingdom.

The British nation in the reigns of the first Stuart Kings of England was deeply imbued with the spirit of religion and reverence for the Sabbath. In the early period of the reign of Charles I. were passed two important statutes on the subject.

1 Chas. I. c. 1, "An Act for punishing divers abuses committed on the Lord's Day, called Sunday" (*g*), A.D. 1625.

Forasmuch as there is nothing more acceptable to God than the true and sincere service and worship of Him according to His holy will, and that the holy keeping of the Lord's Day is a principal part of the true service of God, which in very many places of this realm hath been and now is profaned and neglected by a disorderly sort of people in exercising and frequenting bear-baiting, bull-baiting, interludes, common plays, and other unlawful exercises and pastimes upon the Lord's Day; and for that many quarrels, bloodsheds, and other great inconveniencies have grown by the resort and concourse of people going out of their own parishes to such disordered and unlawful exercises and pastimes, neglecting divine service both in their own parishes and elsewhere: Be it enacted, that from and after forty days next after the end of this session of Parliament, there shall be no meetings, assemblies, or concourse of people out of their own parishes on the Lord's Day within this realm of England, or any the dominions thereof, for any sports and pastimes whatsoever;

nor any bear-baiting, bull-baiting, interludes, common plays, or other unlawful exercises and pastimes used by any person or persons within their own parishes; and that every person or persons offending in any the premises shall forfeit for every offence three shillings and fourpence, the same to be employed and converted to the use of the poor of the parish where such offence shall be committed; and that if any one justice of the peace of the county, or the chief officer or officers of any city, borough, or town corporate where such offence shall be committed, upon his or their view or confession of the party, or proof of any one or more witness by oath which the said justice or chief officer or officers shall, by virtue of this Act have authority to minister, shall find any person offending in the premises, the said justice or chief officer or officers shall give warrant under his or their hand and seal to the constables and churchwardens of the parish or parishes where such offence shall be committed, to levy the said penalty so to be assessed by way of distress and sale of the goods of every such offender, rendering to the said offender the overplus of the money raised of the said goods so to be sold; and in default of such distress, that the party offending be set publicly in the stocks by the space of three hours, and that if any man be sued or impeached for execution of this law, he shall and may plead the general issue, and give the said matter of justification; provided that no man be impeached by this Act except he be called in question within one month next after the said offence committed; provided also, that the ecclesiastical jurisdiction within this realm, or any the dominions thereof, by virtue of this Act or anything therein contained, shall not be abridged, but that the Ecclesiastical Court may punish the said offences as if this Act had not been made (this Act to continue until the end of the first session of the next Parliament and no longer). (*h*)

(*g*) Elections of officers of corporations and other public companies required to be held on a Sunday may be held on the Saturday preceding or the Monday following (3 & 4 Will. IV. c. 31; 5 & 6 Will. IV. c. 76, s. 30, *ibid*). As to restrictions on baking, *see* 6 & 7 Will. IV. c. 37, s. 14; on work in factories (with an exception for Jews), *see* Factory and Workshop Act, 1878; on sale of intoxicating liquor, *see* Licensing Act, 1874, s. 3; on opening of billiard rooms, *see* 8 & 9 Vic. c. 109, ss. 10-13; and on traffic during Divine service, *see* Towns Police Clauses Act,

1847, ss. 21-23, and 2 & 3 Vic. c. 47, s. 51. Sunday fairs are prohibited by 27 Hen. VI. c. 5, and 13 & 14 Vic. c. 23 (*h*), words within brackets repealed; Act made perpetual by 3 Chas. I. c. 5.

3 Chas. I. c. 2, "An Act for the further Reformation of Sundry Abuses committed on the Lord's Day, commonly called Sunday," A.D. 1627.

Forasmuch as the Lord's Day, commonly called Sunday, is much broken and profaned by carriers, wagoners, carters, wainmen, butchers, and drovers of cattle, to the great dishonour of God and reproach of religion: Be it therefore enacted, that no carrier with any horse or horses, (*i*) nor wagonmen with any wagon or wagons, nor carman with any cart or carts, nor wainman with any wain or wains, nor drovers with any cattle, shall after forty days next after the end of this present session of Parliament, by themselves or any other, travel upon the said day upon pain that every person or persons so offending shall lose and forfeit twenty shillings for every such offence; or if any butcher, by himself or any other for him by his privity or consent, shall, after the end of the said forty days, kill or sell any victual upon the said day, that then every such butcher shall forfeit and lose for every such offence the sum of six shillings and eightpence; recoverable before justices in petty sessions.

(*i*) The driver of a van travelling to and from distant towns (as London and York) was held to be a carrier within the meaning of this Act, and liable to the penalty for travelling on a Sunday (*ex parte* Middleton, 3 B. & C. 164; 4 D. & R. 824); but neither this statute nor 29 Chas. II. c. 7, *post*, makes it illegal for a stage coach to run on the Lord's Day (Sandiman *v.* Breach, 7 B. & C. 96). By 1 & 2 Will. IV. c. 22, s. 37, drivers of hackney coaches may ply, and are compellable to drive, on a Sunday. As to parliamentary trains, *see* 7 & 8 Vic. c. 85. s. 10.

Richard Cromwell, son and successor of the Lord High Protector, held the reins of government feebly and for a short period. Charles II. published a Declaration

from his enforced retreat at Breda, in Holland, to the British nation, in which he promised to grant full religious toleration if he should succeed to the throne. It is not improbable Charles would have fulfilled his promise, because he was of easy and forgiving disposition, but while the King was devoted to pleasure, the imperious Clarendon, his Chancellor, and the intolerant Sheldon, his Primate, governed the nation in his name.

It was doubtless through their instrumentality that the intolerant statutes were passed in the reign of Charles II., in direct violation of his promise contained in the Declaration from Breda. The first of these Acts, passed in 1661, effectually prevented conscientious Nonconformists holding office in a municipal corporation. It was intituled "An Act for the well-governing and regulation of Corporations;" *Anno duo decimo et tertio Caroli secundi Regis c.* 1.

Sec. 2 provided for the appointment of Commissioners for executing the powers and provisions contained in the Act.

Sec. 4 enacted that all persons who, upon the 24th December, 1661, should be mayors, aldermen, recorders, bailiffs, town clerks, common councilmen, and other persons then bearing any offices or office of magistracy, or places of trust or employment relating to the government of cities, corporations, and boroughs, and Cinque Ports, should, before the 25th March, 1663, when thereto required by the said Commissioners, take and subscribe the Oaths of Allegiance and Supremacy, and the Oaths of Non-resistance and Abjuration of the Solemn League and Covenant therein prescribed.

Sec. 7 enacted that all such persons who should refuse to take and subscribe the said oaths should thenceforth be *ipso facto* removed from their offices and places of trust as if they were naturally dead.

Sec. 8 empowered the said Commissioners to remove any of such persons from their offices or places of trust if they should deem it expedient for the public safety, although such persons had taken and subscribed the said oaths or should be willing to do so.

Sec. 12 enacted that from and after the expiration of the said

Commissions, no person should be placed, elected, or chosen in or to any of such offices or places of trust that should not within one year next before election have taken the Sacrament of the Lord's Supper according to the rites of the Church of England, and should also take and subscribe the said oaths, and in default thereof every person refusing should forfeit his office or place of trust, which should in that case become vacant.

Sec. 14 enacted that the powers of the said Commissioners should continue till 25th of March, 1663, and no longer.

The next of the intolerant statutes of this reign was passed in 1662, intituled "An Act for the uniformity of Public Prayers and administration of Sacraments and other Rites and Ceremonies, and for establishing the form of making, ordaining, and consecrating Bishops, Priests, and Deacons in the Church of England (13 & 14 Charles II. c. 4;" *Anno decimo tertio et quarto Caroli II. Regis, c.* 4).

Sec. 2 enacted that all and singular ministers in any cathedral, collegiate, or parish church or chapel, or other place of public worship within this Realm of England, Dominion of Wales, and town of Berwick-upon-Tweed, should be bound to say and use the Morning Prayer, Evening Prayer, celebration and administration of both Sacraments, and all other the public and common prayer in such order and form as it was mentioned in the said book annexed and joined to that Act, and intituled, "The Book of Common Prayer and administration of the Sacraments and other Rites and Ceremonies of the Church, according to the use of the Church of England, together with the Psalter or Psalms of David, pointed as they were to be sung or said in Churches, and the form or manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons" And that the Morning and Evening Prayers therein contained should, upon every Lord's Day, and upon all other days and occasions, and at the times therein appointed, be openly and solemnly read by all and every Minister or Curate in every church, chapel, or other place of public worship within this Realm of England and places aforesaid.

Sec. 3 enacted that every parson, vicar, or other minister whatsoever, who then had and enjoyed any ecclesiastical benefice or promotion within this Realm of England or places aforesaid should, in the church, chapel, or place of public worship belonging to his said benefice or promotion, upon some Lord's Day before the Feast

of Saint Bartholomew which should be in the year of our Lord 1662, openly, publicly, and solemnly read the Morning and Evening Prayer appointed to be read by and according to the said Book of Common Prayer at the times thereby appointed, and after such reading thereof should openly and publicly before the congregation there assembled declare his unfeigned assent and consent to the use of all things in the said book contained and prescribed, in these words and no other:—

"I, *A. B.*, do here declare my unfeigned assent and consent to all and everything contained and prescribed in and by the book intituled the Book of Common Prayer, and administration of the Sacraments and other rites and ceremonies of the Church according to the use of the Church of England, together with the Psalter, or Psalms of David, pointed as they are to be sung or said in churches, and the form or manner of making, ordaining, and consecrating of bishops priests, and deacons."

Sec. 5 enacted that all and every such person who, without some lawful impediment to be allowed and approved of by the Ordinary of the place, should neglect or refuse to do the same within the time aforesaid, or, in case of such impediment, within one month after such impediment removed, should *ipso facto* be deprived of all his spiritual promotions, and from thenceforth it should be lawful to and for all patrons and donors of all and singular the said spiritual promotions or of any of them according to their respective rights and titles to present or collate to the same as though the person or persons so offending or neglecting were dead.

Sec. 6 extended the foregoing obligations and provisions to every person who should thereafter be presented, collated, or put into any ecclesiastical benefice or promotion, who was required to conform within two months next after he should be put into actual possession thereof.

Sec. 7 enacted that in all cases where the proper incumbent of any parsonage, vicarage, or benefice with cure both resided on his living and kept a curate, the incumbent in person not having lawful impediment to be allowed by the Ordinary, should once at least in every month openly and publicly read the Common Prayers and Service in the said book, and, if there were occasion, administer each of the Sacraments and other rites of the Church in the parish church or chapel of or belonging to the same parsonage, vicarage, or benefice, as by the said book appointed, under a penalty of £5.

Sec. 8 required every dean, canon, and prebendary of every cathedral or collegiate church, and all masters and other heads, fellows, chaplains, and tutors of or in any college, hall, house of

learning, or hospital, and every public professor and reader in either of the Universities, and in every college elsewhere, and every parson, vicar, curate, lecturer, and every other person in holy orders, and every schoolmaster keeping any public or private school, and every person teaching youth in any house or private family, as tutor or schoolmaster, who upon the 1st day of May, A.D. 1662, or at any time thereafter should be incumbent, or have possession of any deanery, canonry, prebend, mastership, headship, fellowship, professor's place, or reader's place, parsonage, vicarage, or any other ecclesiastical dignity or promotion, or of any curate's place, lecture, or school, or should instruct or teach youth as tutor or schoolmaster, should, before the Feast of Saint Bartholomew, A.D. 1662, at or before his or their respective admission to be incumbent, or have possession as aforesaid subscribe the declaration therein contained against treason, of conformity to the Liturgy of the Church of England as by law established, and disclaiming the Solemn League and Covenant in the manner prescribed in s. 10 upon pain of the loss and forfeiture of every such deanery, canonry, prebend, mastership, headship, fellowship, professor's place, reader's place, parsonage, vicarage, ecclesiastical dignity or promotion, curate's place, lecture, and school, which should thenceforth be void, as if the person so failing were dead.

Sec. 11 imposed on every schoolmaster or other person instructing or teaching youth in any private house or family, as a tutor or schoolmaster, before licence obtained from his Archbishop, Bishop, or Ordinary, for which he should pay twelve pence, and before making and subscribing the aforesaid declaration, for the first offence, three months' imprisonment, and for every second and subsequent offences, three months' imprisonment and a penalty of £5.

Sec. 13 enacted that from and after the Feast of Saint Bartholomew, A.D. 1662, no person who was then incumbent, and in possession of any parsonage, vicarage, or benefice, and who was not already in holy orders by episcopal ordination, or should not before the said feast day be ordained priest or deacon, according to the form of Episcopal Ordination, should have, hold, or enjoy the same but should be utterly disabled and deprived thereof, and of all his ecclesiastical promotions as if he were dead.

Sec. 14 enacted that no person whatsoever should thenceforth be capable to be admitted to any parsonage, vicarage, benefice, or other ecclesiastical promotion or dignity whatsoever, nor should presume to consecrate and administer the Holy Sacrament of the Lord's Supper before he should be ordained Priest according to the

form and manner in the said book prescribed, unless he had formerly been made Priest by Episcopal Ordination under a penalty of £100.

Sec. 15 enacted that the penalties in that Act should not extend to the foreigners or aliens of the Foreign Reformed Churches allowed by His Majesty or his successors.

The consequence of the last Act was the deprivation of two thousand clergymen in holy orders of their ecclesiastical benefices, because they refused conformity with its intolerant provisions.

In the 17th year of the same reign (Charles II.) was passed the Act for restraining Nonconformists from inhabiting corporations:

Anno decimo septimo Caroli II. Regis, c. 2, s. 3, enacted that all such person or persons as should take upon them to preach in any unlawful assembly, conventicle, or meeting, under colour or pretence of any exercise of religion contrary to the laws and statutes of this kingdom, should not at any time from and after the 24th day of March, 1665, unless passing upon the road, come, or be within five miles of any city or town, corporate or borough, that sent burgesses to the Parliament in England, Wales, or Berwick-upon-Tweed, or within five miles of any parish, town, or place, wherein he or they had since the Act of Oblivion, been parson, vicar, curate, stipendiary, or lecturer, or take upon them to preach in any unlawful assembly, conventicle, or meeting, under colour or pretence of any exercise of religion, contrary to the laws and statutes of the kingdom, before he or they had taken and subscribed the Oath of Allegiance therein set forth—which also contained the following words, viz: "and that I will not at any time endeavour any alteration of Government either in Church or State"—before the justices of the peace at their quarter sessions upon pain of forfeiture of £40, one-third to His Majesty, another third for the poor, and the remaining third for the informer.

Sec. 4. That it should not be lawful for any person or persons restrained from coming to any city, town corporate, borough, parish, town, or place as aforesaid, or for any other person or persons as should not first take and subscribe the said oath, and as should not frequent Divine service established by the laws of the kingdom, and carry him or her self reverently, decently, and orderly there, to teach any public or private school, or take any boarders or tablers

that should be taught or instructed by him or her or any other person upon pain of forfeiture of £40 to be recovered and distributed as thereinbefore mentioned.

Sec. 5. That it should be lawful for any two Justices of the Peace of the respective county upon oath to them of any offence against that Act which they were empowered to administer, to commit the offender for six months, without bail or mainprize unless he should upon or before such commitment before such Justices swear and subscribe the said oath and declaration.

The statute *Anno Regni Caroli II. Regis vicesimo secundo*, c. 1 (22 Charles II. c. 1), intituled "An Act to prevent and suppress Seditious Conventicles," provided as follows:—

Sec. 1. If any person of the age of sixteen years or upwards being a subject of this Realm at any time after the 10th day of May then next should be present at any assembly, conventicle, or meeting, under colour or pretence of any exercise of religion or other manner than according to the Liturgy and practice of the Church of England in any place in England, Wales, or Berwick-upon-Tweed, at which conventicle, meeting, or assembly, there should be five persons or more assembled together over and besides those of the same household, if it were in a house where there was a family inhabiting, or if it were in a house, field, or place where there was no family inhabiting, then where any five persons or more were so assembled it should be lawful for one or more Justices of the Peace of the County or Corporation wherein the offence should be committed, and he and they were thereby required and enjoined, upon proof to him or them made of such offence either by confession of the party or oath of two witnesses, or by notorious evidence and circumstance of the fact to make a record of every such offence under his or their hands and seals respectively, and thereupon to impose upon every such offender a fine of five shillings for such first offence.

Sec. 2. If such offender so convicted should at any time again commit the like offence or offences, and be thereof convicted, then such offender so convicted should for every such offence incur the penalty of ten shillings, which fine and fines for the first and every other offence should be levied by distress and sale of the offender's goods, or in case of the poverty of any offender, upon the goods of any other person or persons who should be then convicted in manner aforesaid of the like offence at the same conventicle, so as the sum

to have been levied should not in the whole amount to more than £10.

Sec. 3. Every person who should take upon him to preach or teach in any such meeting, assembly, or conventicle, and should thereof be convicted as thereinbefore mentioned, should forfeit the sum of £20 for the first offence, to be levied as aforesaid, and if the said preacher or teacher so convicted were a stranger, and his name and habitation not known, or were fled and could not be found, or in the judgment of the convicting justice should be thought unable to pay the same, the said penalty might be levied upon the goods and chattels of any other person or persons who should be present as thereinbefore mentioned at the same conventicle, and if such offender so convicted should at any time again commit the like offence or offences, and be thereof convicted, then such offender so convicted of such like offence or offences should incur the penalty of £40, to be levied and disposed of as thereinbefore mentioned.

Sec. 4. Every person who should wittingly and willingly suffer any such conventicle, meeting, or unlawful assembly to be held in his or her house, outhouse, barn, or backside, and be convicted thereof in manner thereinbefore mentioned, should forfeit the sum of £20 to be levied in manner aforesaid, or in case of his poverty or inability, upon the goods and chattels of such persons who should be convicted in manner aforesaid of having been present at the same conventicle.

In the 25th year of the reign of Charles II was passed. the Act "for preventing dangers which might happen from Popish recusants;" *Anno vicesimo quinto Caroli II. Regis, c.* 11.

Sec. 1 enacted that every person that should bear any office, civil or military, or should receive any pay, salary, fee, or wages by reason of any patent or grant from His Majesty, or should have command or place of trust from or under His Majesty, or by his authority, or should be of the household or in the service of His Majesty, or should be in His Majesty's navy, who should inhabit, reside, or be within the Cities of London or Westminster, or within thirty miles from the same, on the first day of Easter Term in A.D. 1673, or at any time during the said term, should personally appear before the end of the said term, or of Trinity Term then next following, in His Majesty's High Court of Chancery, or in His Majesty's Court of King's Bench, and there, in public and open court, between the hours of nine and twelve o'clock in the forenoon, take the several Oaths of Supremacy and Allegiance, and that all such

respective persons and officers who should not have taken the said oaths in the said respective courts, should, on or before the 1st day of August, A.D. 1673, at the quarter sessions for that county or place where he or they should be, inhabit, or reside, on the 20th day of May, take the said oaths in open court, between the said hours of nine and twelve o'clock in the forenoon, and the said respective officers should also receive the Sacrament of the Lord's Supper, according to the usage of the Church of England, at or before the 1st day of August, A.D. 1673, in some parish church, on some Lord's Day, commonly called Sunday, immediately after Divine service and sermon.

Sec. 2 enacted that every person that should be admitted, entered, placed, or taken into any office or offices, civil or military, or should receive any pay, salary, fee, or wages, by reason of any patent or grant of His Majesty, or should have command or place of trust from or under His Majesty, his heirs or successors, or by his or their authority, or in His Majesty's navy, or that should be admitted into any service or employment in His Majesty's household or family after the first day of Easter Term aforesaid, and should inhabit, be, or reside, when he or they were so admitted or placed within the Cities of London or Westminster, or within thirty miles of the same, should take the oaths aforesaid in the said respective courts, in the next term after such his or their admission between the aforesaid hours, and no other: and every such person who should not have taken the said oaths in the said courts should, at the quarter sessions for that county or place where he or they should reside next after such his or their admittance, take the aforesaid oaths, and should also receive the Sacrament of the Lord's Supper according to the usage of the Church of England, within three months after his or their admittance, in some public church upon some Lord's Day, commonly called Sunday, immediately after Divine service and sermon.

Sec. 3. Every of the said persons in the respective courts where he took the said oaths should first deliver a certificate of such his receiving the said Sacrament under the hands of the minister and churchwarden, and should then make proof of the truth thereof by two credible witnesses at the least upon oath, all which should be put on record in the respective courts.

Sec. 4. Every person aforesaid that did or should neglect or refuse to take the said oaths and Sacrament as thereinbefore mentioned should be, *ipso facto*, adjudged incapable and disabled in law to have, occupy, or enjoy the said office or employment.

Sec. 5. Every such person who should neglect or refuse to take

the said oaths and Sacrament as thereinbefore prescribed and yet should execute the office or employment after such neglect or refusal, and be thereof lawfully convicted, should be disabled from suing in any Court of Law or Equity, or to be guardian of any child or executor or administrator of any deceased person, or capable of any legacy or deed of gift, or to bear any office within the realm, and should forfeit the sum of £500, to be recovered by any person who should sue for the same.

Sec. 9 required every such person, at the time he should take the aforesaid oaths of supremacy and allegiance, to make and subscribe the declaration therein contained against Transubstantiation.

The reverence for religion and the Sabbath which prevailed throughout the reigns of the earlier Stuart Kings of England, and increased to asceticism during the Commonwealth, continued to influence the English people in the gay reign of Charles II., when was passed the following statute: 29 Chas. II. c. 7, "An Act for the better observation of the Lord's Day, commonly called Sunday," A.D. 1676.

For the better observation and keeping holy the Lord's Day, commonly called Sunday: Be it enacted, that all the laws enacted and in force concerning the observation of the Lord's Day, and repairing to the church thereon, be carefully put in execution (*l*) and that all and every person and persons whatsoever shall on every Lord's Day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly and privately; and that no tradesman, artificer, workman, labourer, or other person whatsoever (*m*) shall do or exercise any worldly labour, business, or work of their ordinary callings (*n*) upon the Lord's Day, or any part thereof (works of necessity and charity only excepted) (*o*); and that every person being of the age of fourteen years or upwards offending in the premises, shall for every such offence forfeit the sum of five shillings (*p*); and that no person or persons whatsoever shall publicly cry, show forth, or expose to sale any wares, merchandises, fruit, herbs, goods, or chattels whatsoever upon the Lord's Day or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried or showed forth or exposed to sale.

(2.) That no drover, horsecourser, wagoner, butcher, higler (*q*) their or any of their servants, shall travel or come into his or their inn or lodging upon the Lord's Day or any part thereof, upon pain that each and every such offender shall forfeit twenty shillings for every such offence, and that no person or persons shall use, employ, or travel upon the Lord's Day with any boat, (*q*) wherry, lighter, or barge, except it be upon extraordinary occasion, to be allowed by some justice of the peace of the county, or head officer, or some justice of the peace of the city, borough, or town corporate where the fact shall be committed; upon pain that every person so offending shall forfeit and lose the sum of five shillings for every such offence, which penalties are recoverable before justices in petty sessions.

(3.) Provided that nothing in this Act contained shall extend to the prohibiting of dressing of meat in families, or dressing or selling of meat in inns, cooks' shops or victualling houses, for such as otherwise cannot be provided, nor to the crying or selling of milk before nine of the clock in the morning or after four of the clock in the afternoon.

(4.) Provided also that no person or persons shall be impeached, prosecuted, or molested for any offence before mentioned in this Act, unless he or they be prosecuted for the same within ten days after the offence committed.

(5.) Provided that if any person or persons whatsoever which shall travel upon the Lord's Day shall be then robbed, that no hundred or the inhabitants thereof shall be charged with or answerable for any robbery so committed, but the person or persons so robbed shall be barred from bringing any action for the said robbery, any law to the contrary notwithstanding; nevertheless, the inhabitants of the counties and hundreds (after notice of any such robbery to them or some of them given, or after hue and cry for the same to be brought) shall make or cause to be made fresh suit and pursuit after the offenders, with horsemen and footmen according to the statute made in the twenty-seventh year of the reign of Queen Elizabeth, upon pain of forfeiting to the King's Majesty, his heirs and successors, as much money as might have been recovered against the hundred by the party robbed if this law had not been made.

(6.) Provided also that no person or persons upon the Lord's Day shall serve or execute (*s*) or cause to be served or executed, any writ, process-warrant, order, (*t*) judgment, or decree (except in cases of treason felony, or breach of the peace, (*u*) but that the service of every such writ, process, warrant, order, judgment, or decree shall be

void to all intents and purposes whatsoever, and the person or persons so serving or executing the same shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree at all (*x*).

(*l*) *See* 1 Eliz. c. 2, 3 Jas. I. c. 4 (repealed with many others in *pari materia* by 9 & 10 Vic. c. 59) (*m*). A farmer is not included in these general words (Reg. *v.* Silvester 33, L. J. M. C. 79; in that case a conviction of a farmer for employing labourers to cart hay was quashed, Cockburn, C.J. remarking upon the scandal that the labourer might be punished and his employer, the farmer, go scot free) (*n*). In Drury *v.* Defontaine (1 Taunt 131) it was held that a sale of a horse on a Sunday was not void, such sale not being within the ordinary calling of the plaintiff or his agent; but Mansfield, C.J. intimated an opinion that if it had been such ordinary calling the contract would have been void. And, accordingly, it was held that a horse-dealer cannot maintain an action upon a private contract for the sale and warranty of a horse bought by him on a Sunday (Fennel *v.* Ridler, 5 B. & C. 406, 8 D. & R. 204). And an action will not lie upon a contract made and completed on a Sunday (Smith *v.* Sparrow, 4 Bing 84, 2 Car. & P. 544).

But where *A.*, not knowing that *B.* was a horse-dealer, made a verbal bargain with him on a Sunday for the purchase of a horse, the price (which was above £10) being then specified and the horse warranted sound, but it was not delivered till the following Tuesday, when the money was paid, it was held that the contract was not complete until the delivery of the horse, and therefore it was not void under this Act; but assuming it to be void, as the purchaser was ignorant that the vendor was exercising his ordinary calling on the Sunday, he had not

been guilty of any breach of the law, and was therefore entitled to recover back the price of the horse for breach of the warranty (Bloxsome *v.* Williams, 3 B. & C. 232, 5 D. & R. 82).

The statute only prohibits labour, business, or work done in the course of a man's ordinary calling, and therefore a contract of hiring made on a Sunday between a farmer and a labourer for a year is valid, and a service under it confers a settlement (Rex. *v.* Whitmarsh, 7. B. & C. 596, 1 Man & Ry. 452). The enlistment of a soldier is not within the statute (Wolton *v.* Gavin, 16 Q. B. 48).

The giving by *A.*, a tradesman, to *B.*, another tradesman, of a guarantee for the faithful services of a person to be employed by the latter as a traveller, is not an act done in the way of *A.*'s ordinary calling within this statute (Norton *v.* Powell, 4 Man & G. 42). Where, in an action by the drawer against the acceptor of a bill of exchange, it appeared that the bill was drawn on a Sunday, that was held to be no objection against the plaintiff's recovering (Begbie *v.* Levy, 1 Car. & P. 180, 1 Tyrw. 130). Where *A.* sent a mare to *B.*, a farmer, to be covered by a stallion belonging to him, on a Sunday, it was held that the contract was not void under this Act, it not being made by *B.* in the exercise of his ordinary calling, but that even if it were, the contract having been executed, a specific lien for the charge attached to the mare, and she might be detained till it was satisfied (Scarfe *v.* Morgan, 4 M. & W. 270). Where a parol contract for the sale of goods is made on a week-day, but the delivery and acceptance of them take place on a Sunday, it is doubtfnl whether the statute applies (Beaumont *v.* Brengeri, 5 C. B. 301). Where a man

kept a heifer which he had bought on a Sunday, and after that day made a promise to pay for it, he was held liable on a *quantum meruit* (Williams *v.* Paul, 6 Bing 653, 4 Moo. & P. 532).

The words "other person or persons" do not include the owner or driver of a stage coach, and therefore their contracts to carry passengers on a Sunday are binding (Sandiman *v.* Breach, 7 B. & C. 96; *ex parte* Middleton, 3 B. & C. 164). A solicitor entering into an agreement on a Sunday for the settlement of his client's affairs and thereby rendering himself personally liable is not thereby exercising his ordinary calling (Peate *v.* Dicken, 1 C. M. & R. 422, 5 Tyrw. 116).

(*o*) The baking provisions for customers is within this exception, and as it seems within the exception in s. 3 as to cooks' shops (Rex. *v.* Cox, 2 Bur. 787; Rex *v.* Younger, 5 T. R. 449), but baking rolls on a Sunday is within the Act (Crepps *v.* Durden, Cowp. 640, 1 Sm. L. C. 678).

(*p*) The penalty can only be incurred once on the same day (Crepps *v.* Durden, Cowp. 640).

(*q*) *See* Sandiman *v.* Breach, 7 B. & C. 96. This clause is repealed by the Thames Act (7 & 8 Geo. 4, c. lxxv.), s. 1, repealing 11 & 12 Will. 3. c. 21, by s. 13 of which 40 watermen might ply on the Thames between Vauxhall and Limehouse (*see* Calder & Hebble Navigation Co. *v.* Pilling, 14 M. & W. 76).

(*s*) A transmission by post is not service within this statute (R. *v.* Leominster, 2 B. & Smith, 391; 31 L. J. M. C. 95).

(*t*) *See*, as to whether a notice of chargeability and copy of an order of removal comes within this description, R. *v.* Leominster, *supra*.

(*u*) This exception extends to all indictable offences (Rawlins *v.* Ellis, 16 M. & W. 1,721). By 11 & 12 Vic. c. 42 s. 4, justices may grant warrants on Sunday for arrest of persons charged with such offences.

(*x*) Before this statute ministerial acts done on a Sunday were lawful (Pit *v.* Webly, 2 Bulst. 72); but by it the service of any civil process on a Sunday is absolutely void (Wilson *v.* Tucker, 1 Salk. 78), and cannot be made good by any subsequent waiver (Taylor *v.* Phillips, 3 East 155). A debtor cannot therefore be arrested on a Sunday; but a defendant arrested on another day, and escaping by negligence, may be retaken on a Sunday (Anon. 6 Mod. 231); so a person may be taken on an escape warrant (Parker *v.* Moore, 2 Salk. 626; 6 Mod. 95; 2 Lord Raym. 1,028); but not after a voluntary escape (Featherstonhaugh *v.* Atkinson, Barnes 373), nor a person arrested and liberated but against whom there is at the time of his liberation a detainer at the suit of another person (Atkinson *v.* Jameson, 5 T. R. 25). But where a debtor is arrested on a Sunday, the subsequent detainer of him by another creditor, without collusion is not vitiated by the illegality of the original arrest (*In re* Ramsden, 15 L. J. M. C. 113). *See* now, however, Hooper *v.* Lane, 6 H. L. C. 443. Where a *fieri facias* had been executed on Sunday, and the execution had been abandoned the next day, it was held that an entry on the following Thursday to execute a distress warrant was not invalid (Percival *v.* Stamp, 23 L. J., Ex. 25, 9 Ex. 167).

The service on Sunday of a master's order (M'Ileham *v.* Smith, 8 T. R. 86), or of an award to ground an attachment (Rex *v.* Myers, 1 T. R. 265), is void. So is an arrest on an attachment for non-performance of an award (*ibid*), or for non-payment of a penalty on a

conviction before justices (Rex *v.* Myers, 1 T. R. 265), or for not delivering up accounts and books, &c., under 5 & 6 Will. IV. c. 76, s. 60 (Eggington's case, 2 E. & B. 718, 23 L. J. M. C. 41).

Service of notice of plea filed on a Sunday is void (Roberts *v.* Monkhouse, 8 East 547). So is a notice to produce. So a "Declaration in Ejectment" served on a Sunday, (Hughes *v.* Budd, 8 Dowl. 315) or left at the house of the tenant on Saturday, but received by him on Sunday, was held void (Doe *d.* Warren *v.* Roe, 8 D. & R. 342; Doe *v.* Roe, 5 B. & C. 764).

The execution of a writ of inquiry on a Sunday is bad (Hoyle *v.* Lord Cornwallis, 1 Sha. 387). Whether an affidavit appearing by the jurat to be sworn in court on a Sunday is bad, has been made matter of question (Doe *d.* Williamson *v.* Roe, 3 D. & L. 328). A writ of summons tested on a Sunday is a nullity, but a copy bearing date on a Sunday, and service thereof (the writ being correctly tested), are merely irregular, and the irregularity will be waived by acquiescence or *laches* (Carroll *v.* Foulkes, 2 B. C. Rep. 262, 5 D. & L. 590).

Service on a Sunday of notice of appeal to the sessions against an order of justices is not void within this statute (Reg. *v.* Leominster, 2 B. & S. 391; 31 L. J. M. C. 95; *see* Reg *v.* Middlesex Justices 17 L. J. M. C. 111), but would seem to operate from the following day (*ibid*).

It would seem that a citation out of the Spiritual Court may be served on a Sunday (Alanson *v.* Brookbank, Carth. 504, 5 Mod. 449, Walgrave *v.* Taylor, 1 Lord Raym. 706, 12 Mod. 606), or an attachment for a rescue (Anon. Willes, 459). And a person may voluntarily surrender himself to a prison on a Sunday, if he will (*ex parte* Whitchurch, 1 Atk. 55).

By 6 Vic. c. 18, s. 4, persons desirous of having their names inserted in the register of voters for the county are to give notice of their claims to the overseers "on or before the 20th day of July," service of such notice on the 20th day of July was held valid though that day was Sunday (Rawlins, appellant, *v.* Overseers of West Derby, respondents, 2 C. B. 72). So, service of a notice required by that Act by a delivery by post on a Sunday is valid (Colvill, appellant, *v.* Lewis, respondent, *ibid* 60, Reg. *v.* Leominster, 2 B. & S. 391, 31 L. J. M. C. 95).

Where a person has been arrested or served with a process on a Sunday the court will discharge him out of custody, or set the execution aside on motion (Atkinson *v.* Jameson, 5 T. R. 22), and an action of trespass lies against the sheriff (Wilson *v.* Guttery, 5 Mod. 95, S. C., nom. Wilson *v.* Tucker, 1 Salk 78).

Charles II. died in A.D. 1685, and was succeeded by his brother, James II., who professed the Roman Catholic religion. Soon after his accession James sent an agent to the Court of Rome to propose the readmission of England into the Romish Church; but the Pope—Innocent IV.—more prudent and wary, advised the King not to be too precipitate in his attempt for a union of the English and Roman Churches, and discountenanced the proposal. James attempted to revive the penal laws of previous reigns, and to re-establish the High Commission Court. The King, to favour the Catholics, who, with the Dissenters, were equally subject to the penal laws against religion, published a general declaration of indulgence and liberty of conscience to all his subjects. James now—1686—sent the Earl of Castlemaine, his Ambassador to Rome, to express his obeisance to the Pope, and to negotiate the union of his kingdom with the Romish Church

but the sagacious Pontiff, perceiving the impracticability of the step, again declined the overture. The only return made by the Pope to these advances was the despatch of his Nuncio to the English Court, where he resided during the remainder of this reign. Four Catholic Bishops were publicly consecrated in the King's chapel, and their pastoral letters were printed and dispersed by the express permission of the King. The Catholic clergy appeared at Court in the vestments of their order, and were patronised by James. Attempts were also made by the King to introduce Catholics into the offices and dignities of the English Universities.

Incensed by the opposition of the English Church to these measures, the King determined to renew toleration for the Dissenters from its communion. In A.D. 1688 James published a second declaration of indulgence, and commanded it should be read by the clergy in all their churches immediately after Divine service. The clergy denied the power of the King to suspend the penal laws, and were desirous of conciliating the people, who were also hostile to the measure, and they determined to disobey the King's mandate. Six of the English Bishops, with the sanction of the Primate, petitioned the King against the order. The petition was moderately expressed, and complained, not of the freedom granted to Dissenters, but of the unconstitutional power assumed by the King of dispensing with penal enactments. They, therefore, besought James not to require the clergy to read the declaration in their churches. The King was so offended by the Bishops' remonstrance that he ordered them to be imprisoned in the Tower, and to be prosecuted for the seditious libel alleged to have been contained in their petition; but the jury acquitted the Bishops on their trial.

The continuous efforts of James to establish Popery in England, and his repeated exercise of the power to dispense with the penal laws, had offended the nation. The discontent had become so general that a favourable opportunity was offered to his son-in-law, William the Prince of Orange Nassau, to acquire the English throne. This was strengthened by the appeal of the English nobility and others, exiles in Holland from the King's intolerance. The Prince of Orange also received a general invitation for his advent from the Protestants of England. The Prince wished to be assisted by the power of England in his life-long struggle with Louis XIV, King of France, and the Catholics of the League. The Prince, therefore, accepted the invitation of the English Protestants to deliver them from the bigotry and intolerance of James. The Prince of Orange was both brave and politic. Before his expedition into England, the Prince transmitted a declaration promising to endeavour a reconciliation between the Church of England and Protestant Dissenters, and to secure all those who should live peaceably under his government from all persecution on account of their religion. The Prince assured the Church party that his Presbyterian education in Holland had not prejudiced him against Episcopal government, and declared that all loyal and conscientious Dissenters should receive full freedom and protection in their worship. The Prince assembled his fleet and forces, which disembarked at Torbay on the 4th day of November, A.D. 1688. The King's army dispersed before the advance of William's forces, which were continually augmented in their progress. Even Churchill, afterwards the renowned British captain, created for his military exploits Duke of Marlborough, deserted to the Prince of Orange. The result was the flight of James

into France, and the firm establishment of William and his consort Mary on the British throne.

William's first effort in favour of Nonconformists was an attempt to abolish the sacramental test as a qualification for civil office. The King wished to open the door of preferment to all his subjects, Dissenters as well as Churchmen, without infringing their religious scruples. The King intimated this desire to both Houses of Parliament in the following words: "As I doubt not but you will sufficiently provide against all Papists, so I hope you will have room for the admission of all Protestants who are willing and able to serve. This conjunction will tend to the better uniting you among yourselves, and the strengthening you against your common adversaries." A motion was made in the House of Lords in the debate on the Bill for abrogating the Oaths of Allegiance and Supremacy, for the insertion of a clause abolishing the use of the Sacrament as a qualification for civil office, but though sanctioned by their Majesties, the clause was on a division lost by a considerable majority. Another clause was proposed providing that a person should be sufficiently qualified for any office or place of trust who, within a year before or after his admission thereto, should receive the Sacrament of the Lord's Supper, either in the Church of England or any other Protestant place of worship, and could produce a certificate thereof signed by the minister and two members of any such church or place, but this was also rejected.

The next measure of the King was a Bill for the comprehension of all Protestants, and for an alteration of the Rubric of the Church of England, conformable to the views of Dissenters, to induce them to unite. The Bill was with difficulty passed in the House of Lords, but a

majority of the Commons was hostile to the Bill, and it was not proceeded with. The King felt deeply the injustice of these rejections, but he was the more resolved to fulfil his pledge for securing to all his loyal Protestant subjects the free and full exercise of their religious worship.

In the first year of the reign of William and Mary was passed the important statute still in operation, entituled, "An Act for exempting their Majesties' Protestant subjects dissenting from the Church of England from the penalties of certain Laws;" *Anno primo Guilielmi et Marie, c.* 18.

After reciting that ease to scrupulous consciences in the exercise of religion might be an effectual means to unite their Majesties' Protestant subjects in interest and affection—

It was by s. 2 enacted "that neither the statute of 23 Eliz. entituled An Act to retain the Queen's subjects in their due obedience, nor 29 Eliz. entituled An Act for the more speedy and due execution of the same Act, nor the part of the Act of the said reign for the uniformity of Common Prayer and Service in the Church, whereby all persons having no lawful or reasonable excuse to be absent were required to resort to their parish church or chapel, or some usual place where the Common Prayer should be used, nor the statute of 3 James I., intituled An Act for better discovering and repressing Popish recusants, nor the Act of the same year to prevent and avoid dangers which might grow by Popish recusants, nor any other law or statute made against Papists or Popish recusants, except the Act 25 Chas. II. c. 2, intituled An Act for preventing dangers which might happen from Popish recusants, and the Act of 30 Chas. II., An Act for the more effectual preserving the King's person and Government by disabling Papists from sitting in either House of Parliament, should be construed to extend to any person or persons dissenting from the Church of England, who should take the oaths mentioned in the statute made in that Parliament, intituled An Act for removing and preventing all questions and disputes concerning that Parliament, and should make and subscribe the declaration mentioned in the Act 30 Chas. II. to prevent Papists sitting in either House of Parliament, which oaths and declaration the Justices of the Peace at their general quarter

sessions of the peace for the county or place where such person and persons should live, were required to administer, and thereof keep a register.

Sec. 3 exempted and discharged every person already convicted of recusancy who should take the oaths and make the declaration aforesaid.

Sec. 4 exempted all persons who should take the said oaths and make the said declaration from all the pains, penalties, or forfeitures of the statutes 35 Eliz., intituled An Act to retain the Queen's subjects in their due obedience, and of 22 Chas. II. c. 1, intituled An Act to prevent and suppress seditious conventicles.

Sec. 5 provided that if any assembly of persons dissenting from the Church of England should be had in any place for religious worship with the doors locked, barred, or bolted during any time of such meeting together, all persons who should come to and be at such meeting should not receive the benefit of that statute, but should be liable to all the pains and penalties of the laws thereinbefore recited notwithstanding their taking the said oaths and making the said declaration.

Sec. 8 enacted that no person dissenting from the Church of England in holy orders or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation of Dissenting Protestants who should make and subscribe the declaration aforesaid and take the said oaths, and should declare his approbation of and subscribe the Articles of Religion mentioned in the statute, 13 Eliz. c. 12, except the 34th, 35th, 36th, and those words of the 20th article, viz., that the Church had power to declare rites or ceremonies and authority in controversies of faith, should be liable to any of the pains or penalties mentioned in the Act 17 Charles II. c. 2, intituled An Act for restraining Nonconformists from inhabiting in corporations, nor to the penalties mentioned in 22 Chas. II. c. 1, nor the penalty of £100 mentioned in 13 & 14 Chas. II. c. 4, intituled An Act for the uniformity of public prayers and administration of Sacraments.

Sec. 12 enacted that every Justice of the Peace might at any time require any person who should go to any meeting for exercise of religion to make and subscribe the declaration aforesaid, and also to take the said oaths and the declaration of fidelity thereinafter mentioned in case of scruple, and upon refusal thereof such Justice of the Peace was thereby required to commit such person to prison without bail or mainprize, and to certify the name of such person to the next general or quarter sessions of the peace of the county,

city, or place, where such person should reside, and if such person so committed should, upon a second tender at such sessions, refuse to make and subscribe the declaration aforesaid, such person refusing should be recorded, and should be taken for a Popish recusant convict, and incur all the penalties and forfeitures of the aforesaid laws.

Sec. 13 exempted all persons, Dissenters from the Church of England, who scrupled the taking of an oath, from all penalties, provided they made and subscribed the declarations therein contained of allegiance and supremacy, and of their belief in the Holy Scriptures.

Sec. 17 enacted that neither that Act, nor any clause, article, or thing therein contained, should extend or be construed to extend to give any ease, benefit, or advantage to any Papist or Popish recusant, or to any person who should deny in his preaching or writing the doctrine of the Blessed Trinity as declared in the therein mentioned Articles of Religion.

Sec. 18 provided that if any person or persons at any time or times after the 10th day of June then next should willingly and of purpose maliciously or contemptuously come into any cathedral, or parish church, or chapel, or other congregation permitted by that Act, and disquiet or disturb the same, or misuse any preacher or teacher, such person or persons upon proof thereof before any justice of the peace by two or more sufficient witnesses should find two sureties to be bound by recognizance in the penal sum of £50, and in default of such sureties should be committed to prison, there to remain till the next general or quarter sessions, and upon conviction of the said offence should suffer the penalty of £20.

Sec. 19 provided that no congregation or assembly for religious worship should be permitted until the place thereof should be certified to and recorded in the registry of the diocese, archdeaconry, or general quarter sessions of the peace for the county, city, or place where it should be.

The entire provisions of the Toleration Act are so seldom to be found outside the statutes at large that they will be reprinted in the Appendix.

A congregation of Lutherans, using the German language in their worship, were held entitled to the protection of the last Act, Rex *v.* Hube, Peake 132, 5 Term Reports 542, and it is no defence to an indictment for

disturbing a congregation of Protestant Dissenters that the violence was committed by the defendant in asserting his right to the clerk's reading desk, and no proof of the officiating minister having taken the prescribed oaths was held necessary. Each defendant is liable to the full penalty on being convicted under this statute, Rex *v.* Hube, *supra*, Rex *v.* Cheere, 4 Barnewell & Cresswell 902. All Protestant Dissenters, Roman Catholics, and Jews, have a right to protection under this and subsequent statutes on the subject, if disturbed in their quiet and decent devotions, Rex *v.* Wroughton, 5 Burrows, 1683.

William III. died on the 8th day of March, 1702, his Royal Consort Mary having predeceased him. Both their Majesties were equally liberal in their views on religion and in their legislation for their Protestant subjects. Their reign was also illustrious for its military exploits, and its wisdom and prosperity in civil affairs. Queen Anne, their successor on the throne, was amiable, but she wanted most of the qualities of a Sovereign. Lacking the will and mind to govern, she became the instrument of her advisers in the affairs of Church and State. Her reign of 12 years was characterized by measures especially affecting religion, reversing the legislation of William and Mary. Anne was a true Stuart, and as a ruler she manifested the qualities of her race. With her special sanction were passed the statutes for preventing occasional conformity and the Schism Act, both of which carried the ecclesiastical legislation of England back into the reign of the Second Charles.

The first of these was entitled "An Act for preserving the Protestant Religion by better securing the Church of England as by law established, and for confirming the toleration granted to Protestant Dissenters by an Act

intituled 'An Act for exempting their Majesty's Protestant subjects dissenting from the Church of England from the penalties of certain laws, and for supplying the defects thereof, and for the further securing the Protestant Succession by requiring the practisers of the law in North Britain to take the oaths and subscribe the declaration therein mentioned;'" *Anno regni Annæ Reginæ decimo, c.* 2.

After reciting the said Act of 13 Chas. II. c. 2, intituled "An Act for the well governing and regulating of Corporations," and 25 Chas. II. c. 11, intituled "An Act for preventing dangers which might happen from Popish recusants," it was enacted that after the 25th day of March, 1712, if any officer, civil or military, who should receive any public salary, or if any magistrate or common councilman of a corporation, city, or borough, who, by the said Acts of 13 & 25 Chas. II. were obliged to receive the Holy Sacrament, should, after their admission into office and during their tenure of such, and their continuance in it, be present at any conventicle or place of worship differing from the Established Church of England, where were present ten persons besides the family of the house, and in which the Liturgy was not used, every such person should for such offence forfeit £40, to be recovered by any informer or prosecutor of the charge, and that every person convicted of such offence should be disabled to hold his office or place of trust, and be incapable of holding any office or employment under Her Majesty, or in any corporation, unless and until he should be able to make oath that he had not been present at any such conventicle during a whole year, and in that period had received the Lord's Supper according to the rites and usage of the Church of England at least three times.

Sec. 9 enabled a preacher or teacher of any congregation of dissenting Protestants, who should be duly qualified according to the said Act, to officiate in any congregation outside the county in which he qualified, provided the place of meeting of such congregation were previously duly certified and registered according to the said Acts.

The Schism Act, passed in 1713–14, was intituled "An Act to prevent the growth of Schism, and for the further security of the Churches of England and Ireland as by law established;" *Anno duodecimo Annæ Reginæ, c.* 7.

It prescribed that no person should keep any public or private school or seminary to teach or instruct youth as tutor or schoolmaster, unless he should subscribe a declaration: "I, *A. B.*, do declare that I will conform to the Liturgy of the Church of England as by law established," and should have obtained a licence to teach from the Archbishop, Bishop, or Ordinary, under his seal of office. Whomsoever should be found so teaching without the prescribed conditions was disabled and made liable to three months' imprisonment on conviction thereof. No licence should be granted unless the applicant produced a certificate that he had received the Sacrament, according to the usage of the Church of England, at some parish church within the year. If the schoolmaster should afterwards be present at a conventicle, or any other place of worship than that of the Established Church of England, he should be liable, on conviction, to three months' imprisonment, and be incapable of teaching in any school or seminary, or instructing youth as tutor or schoolmaster. Further, if any person licensed as therein mentioned should teach any other catechism than the Book of Common Prayer, the licence of such person should thenceforth be void, and such person should be liable to the penalties of that Act. A person who had forfeited his licence for any of the causes mentioned in the Act, must, in order to resume his competency, be able to make oath in a court of justice that during twelve months preceding he had not been present at any conventicle for dissenting worship, and had during that period received the Sacrament according to the usage of the Church of England.

The line of the Stuart Monarchs terminated with Queen Anne, who died on the 1st day of August, 1714. The Guelphic House of Hanover now succeeded to the British throne, in the person of George I. Nurtured and educated in Northern Germany—the country of Luther and the Protestant Reformation—the Hanoverian dynasty was deeply imbued with the principles of civil and religious liberty, which have been under their countenance and protection introduced into the legislation of England ever since the accession to the throne of that royal house. The King enunciated this maxim in his speech to the Parliament of 1717, in these words: "I could heartily wish that at a time when the enemies of our Protestant religion are,

by all manner of artifices, endeavouring to undermine and weaken it, both at home and abroad, all those who are friends to our present happy establishment might unanimously concur in some proper method for the greater strengthening the Protestant interest, of which, as the Church of England is unquestionably the main support and bulwark, so will she reap the principal benefit of every advantage accruing by the union and mutual charity of all Protestants."

On the 18th of February, 1719, the King gave his royal assent to the Act for strengthening the Protestant interest in these kingdoms, *Anno quinto Georgii primo Regis*, c. 4.

After reciting the Act 10 Queen Anne, c. 2, intituled, "An Act for preserving the Protestant Religion by better securing the Church of England," &c., and that said Act and the Schism Act, 12 Anne, c. 7, were found inconvenient, it was enacted that the first mentioned Act from the beginning to the words following: "And it is hereby further enacted and declared by the authority aforesaid that the toleration granted to Protestant Dissenters," &c., and also the said Act, 12 Anne, c. 7, intituled "An Act to prevent the growth of Schism," &c., should be annulled and made void.

Sec. 2 enacted that if any mayor, bailiff, or magistrate in England, Wales, or Berwick-upon-Tweed, or the Isles of Jersey or Guernsey, should knowingly or wilfully resort to or be present at any public meeting for religious worship other than the Church of England as by law established in the gown or other peculiar habit, or attended with the ensign or ensigns of or belonging to such his office, that every such mayor, bailiff, or other magistrate being thereof convicted by due course of law should be disabled to hold every such office or employment, and should be adjudged incapable to bear any public office or employment whatsoever within the kingdom and parts aforesaid.

In the reign of George I. was passed the Act *Anno octavo Georgiis primo Regis*, c. 6, intituled "An Act for granting the people called Quakers such forms of affirma-

tion or declaration as may remove the difficulties which many of them lie under."

This statute relieved Quakers from the necessity of using the words "in the presence of Almighty God" when they should make affirmation, by substituting the words, "I solemnly, sincerely, and truly affirm and declare," &c.

George I. died on a journey to Hanover on the 11th day of June, 1727, and was succeeded by his son George II. who inherited with his father's crown all his father's liberality. In this reign was passed an Act compelling all spiritual and lay impropriators of tithes and every clergyman to adopt a cheap and summary remedy for the recovery of tithes and Church rates from Quakers (who had a conscientious objection to their voluntary payment) in lieu of the previous dilatory and expensive proceedings.

George II. died on the 25th day of October, 1760, in the thirty-third year of his reign. He was succeeded on the British throne by his grandson, George III., who was pre-eminent for his Protestantism. Now was passed the Act "for the further relief of Protestant Dissenting Ministers and Schoolmasters;" *Anno decimo nono Georgii tertii, c.* 44.

Sec. 1. After reciting that by the Toleration Act, 1 Will. & Mary, c. 18, persons dissenting from the Church of England in holy orders or pretended holy orders, and preachers or teachers of congregations of Dissenting Protestants, were required in order to be entitled to the exemptions, privileges, and benefits of the said recited Act, to declare their approbation of and to subscribe the articles of religion mentioned in the statute of 13 Queen Eliz. c. 12, with the exemption prescribed in the first recited Act, and that many such persons scrupled to do so, for giving relief to such scrupulous persons in the exercise of their religion, it was thereby enacted that every person dissenting from the Church of England as thereinbefore mentioned, should make and subscribe the declaration against Popery, required by the said first recited Act, and

should make and subscribe a declaration in these words: "I, *A. B.*, do solemnly declare in the presence of Almighty God that I am a Christian and a Protestant, and as such that I believe that the Scriptures of the Old and New Testament, as commonly received among Protestant Churches, do contain the revealed Will of God, and that I do receive the same as the rule of my doctrine and practice;" and every such person was thereby declared to be entitled to all the exemptions, privileges, benefits, and advantages granted to Protestant Dissenting Ministers by the first recited Act, and by the Act 10 Anne Reginæ, c. 2, and the Justices of the Peace at their quarter sessions were thereby required to tender and administer the last-mentioned declaration to every such minister upon his offering himself to make and subscribe the same, and thereof to keep a register, for which a fee of sixpence and no more was to be charged by any officer of the Court, and an additional fee of sixpence and no more for every certificate thereof, and every such person qualified as aforesaid should be exempt from serving in the Militia of the kingdom, and from imprisonment or other punishment by the Uniformity Act of 13 & 14 Chas. II. c. 4, or by the Act 15 Chas. II. c. .

Sec. 2 enacted that no Dissenting Minister, nor any other Protestant dissenting from the Church of England, who should take the aforesaid oaths, and make and subscribe the said declaration against Popery and the declaration thereinbefore set forth, should be prosecuted in any court whatsoever for teaching and instructing youth as a tutor or schoolmaster.

Sec. 3 provided that nothing in that Act contained should enable any person dissenting from the Church of England to obtain or hold the mastership of any college or school of Royal foundation, or of any other endowed college or school for the education of youth, unless the same should have been founded since the first year of the reign of William and Mary for the immediate use and benefit of Protestant Dissenters.

Sec. 4 declared that the Toleration Act of 1 Will. & Mary, c. 18, and that Act should be public Acts, and as such should be judicially taken notice of by all courts of law.

Now was passed the following statute for the better observance of the Sabbath:—

21 Geo. 3 c. 49. "An Act for preventing certain Abuses and Profanations on the Lord's Day, called Sunday" (*y*), A.D. 1781.

Whereas certain houses, rooms, or places within the Cities of London or Westminster, or in the neighbourhood thereof, have of late frequently been opened for public entertainment or amusement upon the evening of the Lord's Day, commonly called Sunday; and at other houses, rooms, or places within the said Cities or in the neighbourhood thereof, under pretence of inquiring into religious doctrines and explaining texts of Holy Scripture, debates have frequently been held on the evening of the Lord's Day concerning divers texts of Holy Scripture, by persons unlearned and incompetent to explain the same, to the corruption of good morals, and to the great encouragement of irreligion and profaneness: Be it enacted that from and after the passing of this present Act any house, room, or other place which shall be opened or used for public entertainment or amusement, (*z*) or for publicly debating on any subject whatsoever upon any part of the Lord's Day, called Sunday, and to which persons shall be admitted by the payment of money, or by tickets sold for money, shall be deemed a disorderly house or place; and the keeper of such house, room, or place shall forfeit the sum of two hundred pounds for every day that such house, room, or place shall be opened or used as aforesaid on the Lord's Day to such person as will sue for the same, and be otherwise punishable as the law directs in cases of disorderly houses; and the person managing or conducting such entertainment or amusement on the Lord's Day, or acting as master of the ceremonies there, or as moderator, president, or chairman of any such meeting for public debate on the Lord's Day, shall likewise for every such offence forfeit the sum of one hundred pounds to such person as will sue for the same; and every doorkeeper, servant, or other person who shall collect or receive money or tickets from persons assembling at such house, room, or place on the Lord's Day, or who shall deliver out tickets for admitting persons to such house, room, or place on the Lord's Day, shall also forfeit the sum of fifty pounds to such person as will sue for the same.

2. And whereas by reason of the many subtle and crafty contrivances of persons keeping such houses, rooms, or places as aforesaid it may often be difficult to prove who is the real owner or keeper thereof. Be it enacted by the authority aforesaid that any person who shall at any time hereafter appear, act, or behave him or herself as master or mistress, or as the person having the care, government, or management of any such house, room, or place as aforesaid, shall be deemed and taken to be the keeper thereof, and shall be liable to be sued or prosecuted and punished as such, notwithstanding he or she be not in fact the real owner or keeper thereof, and

wherever any such house, room, or place shall belong to or be kept by divers persons in partnership, as joint owners or joint keepers thereof, each and every such joint owner or joint keeper of such house, room, or place shall be deemed the keeper thereof, and shall be liable to be sued or prosecuted and punished as such, and any house, room, or place at which persons shall be supplied with tea, coffee, or any other refreshments of eating or drinking on the Lord's Day at any greater prices than the common and usual prices at which the like refreshments are commonly sold upon other days at such house, room, or place, or at coffee-houses or other houses where the same are usually sold, shall be deemed a house, room, or place to which persons are admitted by the payment of money, although money be not there taken in the name of or for admittance, or at the time when persons enter into or depart from such house, room, or place, and any house, room, or place which shall be opened or used for any public entertainment or amusement, or for public debate on the Lord's Day at the expense of any number of subscribers or contributors to the carrying on any such entertainment or amusement or debate on the Lord's Day, and to which persons shall be admitted by tickets, to which the subscribers or contributors shall be entitled, shall be deemed a house, room, or place to which persons are admitted by the payment of money within the meaning of this Act.

3. And for the better preventing persons assembling on the Lord's Day for such irreligious purposes as aforesaid. Be it further enacted by the authority aforesaid that any person advertising or causing to be advertised any public entertainment or amusement, or any public Meeting for debating on any subject whatsoever on the Lord's Day, to which persons are to be admitted by the payment of money, or by tickets sold for money, and any person printing or publishing any such advertisement shall respectively forfeit the sum of fifty pounds for every such offence to any person who will sue for the same.

4. And be it further enacted by the authority aforesaid that any person entitled to either of the aforesaid forfeitures may sue for the same by action of debt in any of His Majesty's Courts of Record at Westminster, (*a*) in which it shall be sufficient to declare that the defendant is indebted to the plaintiff in the sum of
(being the sum demanded by the said action), being forfeited by an Act made in the twenty-first year of the reign of His Majesty King Geo. III. intituled, "An Act for preventing certain Abuses and Profanations on the Lord's Day, called Sunday," and the plaintiff, if he recover in any such action, shall have his full costs.

5. Provided that no action shall be brought for either of the said penalties by this Act imposed, unless the same be brought within six calendar months next after the offence committed.

6. Provided also, that if any action or suit shall be brought against any person for anything done in pursuance and in execution of this Act, the defendant may plead the general issue; and if a verdict pass for the defendant, or the plaintiff discontinue his or her action, or be nonsuited, or judgment be given against the plaintiff, then such defendant shall have treble costs.

7. Provided also, that the ecclesiastical jurisdiction within this realm shall not by this Act be altered or abridged, but that the Ecclesiastical Courts may punish the said offences as if this Act had not been made.

8. Provided also, that nothing in this Act contained shall be construed to extend to, take away, alter, or abridge any of the liberties or immunities to which the Protestant subjects of this kingdom are entitled by an Act made in the first year of the reign of King William and Queen Mary, intituled, "An Act for exempting their Majesties' Protestant subjects dissenting from the Church of England from the penalties of certain laws."

(*y*) This Act, which is materially amended by "The Remission of Penalties Act, 1875" (38 & 39 Vic. c. 80, p. 506, *post*), was framed by the Bishop of London (Dr. Porteous), in order to put down certain "promenades" and so-called "theological academies."

(*z*) A place registered by certain "recreative religionists" for public worship, where only sacred music is performed, where nothing dramatic is introduced, and where lectures "intended to make science the handmaid to religion" are delivered, containing nothing hostile to religion, is not within these words, although the public worship for which the place is registered is according to no established or usual form (Baxter *v.* Langley, L. R. 4 C. P. 21, 38 L. J. M. C. 1); but an "aquarium" or place for the exhibition of fish in tanks, whether the attraction of such an exhibition be enhanced by those of sacred

music and a reading-room, &c. (Terry *v.* Brighton Aquarium Co., L. R. 10, Q. B. 306), or not (Warner *v.* Brighton Aquarium Co. L. R. 10, Ex. 291), is clearly a place of entertainment or amusement within the statute, which seems to extend to every enclosed building or garden of public entertainment or public debate which is open either to the public on payment of money or to subscribers by tickets.

As to mitigation, &c., of penalties, *see* 38 & 39 Vic. c. 80, *post.*

(*a*) In Girdlestone *v.* Brighton Aquarium Co. (3 Ex. D. 137), the defendants, against whom a writ had been issued by the plaintiff, procured a friendly informer (ignorant of such writ) to sue them for the same and further penalties, and suffering judgment by default, set up such judgment in answer to the action of the plaintiff. It was held that such judgment could not be set up in answer, and that the debt to the plaintiff had become due at the time of the issuing of his writ, and this decision was afterwards, in substance, affirmed by the Court of Appeal (4 Ex. D. 107). *See* as to "covinous actions popular," 4 Hen. VII. c. 20, *ante*, vol. iv. tit. "Penal Actions"; and *see* 38 & 39 Vic. c. 80, *post.* Barrett *v.* Johnson, 2 Jones' Irish Exchequer Reports 197, appears to conflict with Girdlestone *v.* Brighton Aquarium Co., *supra.*

The statute 52 Geo. III. c. 155, intituled "An Act to repeal certain Acts and amend other Acts relating to religious worship and assemblies and persons teaching or preaching therein," was passed to supplement and expound the provisions of the previous Toleration Acts, viz., 1 Will. & Mary, c. 18, and 19 Geo. III. c. 44.

Sec. 1 repealed the Act of 13 & 14 Chas. II. intituled An Act for preventing the mischiefs and dangers that may arise by certain persons called Quakers and others refusing to take lawful oaths, and the Act 17 Chas. II. c. 2, intituled An Act for restraining Nonconformists from inhabiting in corporations, and the Act 32 Chas. II. c. 1, intituled An Act to prevent and suppress seditious conventicles.

Sec. 2 enacted that from and after the passing of that Act no congregation or assembly for religious worship of Protestants at which there should be present more than twenty persons besides the immediate family and servants of the person in whose house or upon whose premises such meeting, congregation, or assembly should be had, should be permitted and allowed unless and until the place of such meeting, if the same should not have been duly certified and registered under any former Act or Acts of Parliament relating to registering places of religious worship should be certified to the Bishop of the diocese, or to the Archdeacon, or to the Justices of the Peace at their general or quarter sessions for the county, riding, division, city, town, or place in which such meeting should be held, in manner therein mentioned; and every person who should knowingly permit or suffer any such congregation or assembly to meet in any place occupied by him, until the same should have been so certified, should forfeit for every time any such congregation or assembly should meet, contrary to the provisions of that Act, a sum not exceeding £20, nor less than 20s., at the discretion of the convicting justices.

Sec. 3 provided that every person who should teach or preach in any congregation or assembly as aforesaid, in any place, without the consent of the occupier thereof, should forfeit for every such offence a sum not exceeding £30, nor less than 40s., at the discretion of the convicting justices.

Sec. 4 enacted that from and after the passing of that Act, every person who should teach or preach at or officiate in or should resort to any congregation or assembly for religious worship of Protestants, whose place of meeting should be duly certified according to the provisions of that or any other Act, should be exempt from all pains and penalties under any Act relating to religious worship.

Sec. 5 provided that every person not having taken the oaths and subscribed the declaration thereinafter specified, who should teach or preach at any place of religious worship certified according to that Act, should, when thereto required by any justice of the peace by writing under his hand, take and make and subscribe, in the presence of such justice, the oaths and declarations specified in the

Act 19 Geo. III. c. 44, and no such person refusing to do so should be permitted thereafter to teach or preach until he should have taken such oaths and made such declaration, on pain of forfeiture for every time he should so teach or preach, a sum not exceeding £10 nor less than 10s.

Sec. 6 provided that no person should be required by any justice of the peace to go a greater distance than five miles from his house or residence for the purpose of taking such oaths.

Sec. 7 enabled every Protestant subject to appear voluntarily before any justice of the peace, who should administer to such person the oaths and declaration thereby required.

Sec. 8 required every justice of the peace to give to every person taking such oaths, and making such declaration as aforesaid, a certificate thereof under his hand.

Sec. 9 exempted every such teacher or preacher who should qualify himself according to the Act from liability to serve in the Militia and other civil services.

Sec. 11 enacted that no meeting, assembly, or congregation of persons for religious worship should be had in any place with the door locked, bolted, or barred, or otherwise fastened so as to prevent any persons entering therein during the time of any such meeting, assembly, or congregation, and the person teaching or preaching at such meeting, assembly, or congregation, should forfeit for every such occasion as last aforesaid, a sum not exceeding £20, nor less than 40s.

Sec. 12 enacted that, if any person or persons at any time after the passing of that Act, did and should wilfully and maliciously or contemptuously disquiet or disturb any meeting, assembly, or congregation of persons assembled for religious worship, permitted or authorized by that Act or any former Act or Acts, or should in any way disturb, molest, or misuse any preacher, teacher, or person officiating at such meeting, assembly, or congregation, or any person or persons there assembled, such person or persons so offending, upon proof thereof before any justice of the peace by two or more credible witnesses, should find two sureties to be bound by recognizances in £50, to answer such offence, and in default of sureties should be committed to prison, there to remain till the next general or quarter sessions, and upon conviction thereof should suffer the pain and penalty of £40.

Sec. 13 provided that nothing therein contained should affect the celebration of Divine service according to the rites of the United

Church of England and Ireland by ministers thereof in any place used for such purpose, or consecrated, or licensed by the Archbishop, Bishop, or other person authorized.

Sec. 14 provided that nothing therein contained should extend to the people called Quakers, nor to any meetings or assemblies for religious worship held by such persons, or to alter or repeal any Act other than the thereinbefore repealed Act of 13 & 14 Chas. II. relating to the people called Quakers.

The statute 53 Geo. III. c. 160, intituled "An Act to relieve persons who impugn the doctrine of the Holy Trinity from certain penalties" was passed to repeal the penal sections of the Toleration Act, 1 Will. & Mary, c. 18, and 9 & 10 Will. III. c. intituled "An Act for the more effectual suppression of blasphemy and profaneness, so far as the same relate to persons denying the Holy Trinity," and 1 Charles II. intituled "An Act against the crime of blasphemy as against anti-Trinitarians."

The statute 9 Geo. IV. c. 17, intituled "An Act for repealing so much of several Acts as imposed the necessity of receiving the Sacrament of the Lord's Supper according to the rites of the Church of England as a qualification for certain offices and employments was passed to repeal the penal clauses contained in the Corporation and Test Acts against Nonconformists.

Sec. 1 repealed the Acts 13 Chas. II. c. 1, 25 Chas. II. c. 2, and 16 Geo. II. c. , so far as the same imposed the necessity of taking the Sacrament of the Lord's Supper according to the rites and usages of the Church of England as qualification for offices and employments.

Sec. 2 enacted that every person who should thereafter be placed, elected, or chosen in or to the office of mayor, alderman, recorder, bailiff, town clerk, or common councilman, or in or to any office of magistracy, or place of trust or employment relating to the government of any city, corporation, borough or cinque port in England or Wales, or Berwick-upon-Tweed, should within one calendar month next before his admission into any of the aforesaid offices or

trusts, make and subscribe the declaration following: "I, *A. B.*, do solemnly and sincerely, in the presence of God, profess, testify, and declare, upon the true faith of a Christian, that I will never exercise any power, authority, or influence which I may possess by virtue of the office of , to injure or weaken the Protestant Church as it is by law established in England, or to disturb the said Church or the Bishops and Clergy of the said Church in possession of any right or privilege to which such Church, or the said Bishops and Clergy, are or may be by law entitled."

Sec. 3 enabled two justices of the peace to administer and take the said declaration.

Sec. 4 disqualified every person from acting as mayor, magistrate, recorder, bailiff, alderman, town clerk, or common councilman, who should omit or neglect to make and subscribe the said declaration.

Sec. 5 extended the provisions of s. 2 to every person who should thereafter receive or accept from His Majesty, or his successors, any patent, grant, or commission, office, or employment requiring theretofore the taking of the Sacrament of the Lord's Supper, according to the rite of the Church of England, within six calendar months after his admission thereto, otherwise his appointment should be void.

In the following year was passed the Act for the relief of His Majesty's Roman Catholic subjects, 10 Geo. IV. c. 7.

Sec. 1, after reciting that by various Acts of Parliament certain restraints and disabilities were imposed on His Majesty's Roman Catholic subjects to which others were not liable, and that by various Acts certain oaths and declarations, commonly called the Declaration against Transubstantiation and Invocation of Saints and the Sacrifice of the Mass, were required to be made as qualifications for sitting and voting in Parliament, and for the enjoyment of certain offices, franchises, and civil rights, it was enacted that from thenceforth all such parts of the said Act as required the said declarations or either of them, except as thereinafter provided, were thereby repealed.

Sec. 2 enacted that it should be lawful for any person professing the Roman Catholic religion being a peer, or who should be returned as member of the House of Commons, to sit and vote in either House of Parliament, being in other respects qualified, upon taking and subscribing the following oath instead of the oaths of allegiance, supremacy, and abjuration :—

"I, *A. B.*, do sincerely promise and swear that I will be faithful and bear true allegiance to His Majesty King George IV., and will defend him to the utmost of my power against all conspiracies and attempts which shall be made against his person, crown, or dignity, and I will do my utmost endeavour to disclose and make known to His Majesty, his heirs and successors, all treasons and traitorous conspiracies which may be formed against him or them. And I do faithfully promise to maintain, support, and defend, to the utmost of my power, the succession of the Crown, which succession by an Act intituled, 'An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject, is and stands limited to the Princess Sophia, Electress of Hanover, and the heirs of her body, being Protestants, hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the Crown of this Realm.' And I do further declare that it is not an article of my faith, and that I do renounce, reject, and abjure the opinion that princes excommunicated or deprived by the Pope, or any other authority of the See of Rome, may be deposed or murdered by their subjects, or by any person whatsoever. And I do declare thatI do not believe that the Pope of Rome, or any other foreign prince, prelate, person, state, or potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority, or pre-eminence directly or indirectly within this Realm. I do swear that I will defend to the utmost of my power the settlement of property within this Realm, as established by the laws. And I do hereby disclaim, disavow, and solemnly abjure any intention to subvert the present Church Establishment as settled by law within this Realm. And I do solemnly swear that I never will exercise any privilege to which I am or may become entitled to disturb or weaken the Protestant religion or Protestant government in the United Kingdom. And I do solemnly, in the presence of God, profess, testify, and declare that I do make this declaration and every part thereof in the plain and ordinary sense of the words of this oath. without any evasion, equivocation, or mental reservation whatsoever, So help me God."

Sec. 3 provided that in the said oath the name of the Sovereign of this kingdom for the time being should be substituted for His then Majesty.

Sec. 4 provided that no person professing the Roman Catholic religion should be capable of sitting or voting in either House of Parliament, unless he should first take and subscribe the said oath.

Sec. 5 declared that persons professing the Roman Catholic religion might lawfully vote at elections of members to serve in

Parliament, and at the election of representative peers, and to be elected such representative peers, being in other respects qualified, upon taking and subscribing the said oath.

Sec. 8 abolished the declaration required by 8 & 9 Will. III., intituled "An Act for preventing the growth of Popery," save as thereinafter excepted. 8 & 9 Will. III. c. 3.

Sec. 9 disqualified every person in holy orders of the Church of Rome from being a member of the House of Commons.

Sec. 10 enabled all His Majesty's Roman Catholic subjects to hold and enjoy all civil and military offices and places of trust or profit under His Majesty, his heirs or successors, and to exercise any other franchise or civil right save as thereinafter excepted upon taking and subscribing the said oath.

Sec. 11. Every person professing the Roman Catholic religion shall not be exempted from taking other oaths required of persons on their admission into offices or places of trust.

Sec. 12 disqualifies any person professing the Roman Catholic religion holding or exercising the office of guardian and justice, or Regent of the United Kingdom, or the office of Lord High Chancellor, Lord Keeper, or Lord Commissioner of the Great Seal of Great Britain or Ireland, or Lord Lieutenant or Deputy or Governor of Ireland, or High Commissioner to the Church of Scotland.

Sec. 14 enabled any person professing the Roman Catholic religion to be a member of any lay body corporate upon taking and subscribing the said oath, and such other oath or oaths as are required of such persons in such case.

Sec. 15 disqualified any such person as last aforesaid voting in the election or appointment of any person to any ecclesiastical benefice or office or place in the Established Churches of England, Ireland, or Scotland.

Sec. 16. Nothing therein contained should enable any such person as aforesaid to hold, enjoy, or exercise any office place, or dignity in the Established Churches of England, Ireland, or Scotland, or in any Ecclesiastical Court of Judicature, or in any cathedral or collegiate or ecclesiastical establishment, or in any of the universities or colleges of this realm, or to exercise any right of presentation to an ecclesiastical benefice.

Sec. 18 disqualified every such person as aforesaid, advising His Majesty, his heirs or successors, or any guardian or Regent of the United Kingdom, or the Lord Lieutenant or Governor of Ireland,

touching the appointment or disposal of any office or preferment in the said Churches of England, Ireland, or Scotland.

Sec. 19. Every person professing the Roman Catholic religion should, within one calendar month after his election, and before his admission into the office of mayor, provost, alderman, recorder, bailiff, town clerk, magistrate, or councillor in any city, borough, or town corporate, take and subscribe the said oath in the presence of the proper authority, or in the presence of two justices of the peace of such place or of the county wherein it is situate, and should be entered in the roll or record accordingly.

Sec. 20. Every such person as aforesaid who should be appointed to any office or place of trust or profit under His Majesty, his heirs or successors, should, within three calendar months after or before he shall exercise such appointment, take and subscribe the said oath in any of the Supreme Courts of Judicature or general quarter sessions of the peace, between the hours of nine in the morning and four in the afternoon, of which record shall be kept accordingly.

Sec. 21. Every such person as aforesaid offending in the matter aforesaid should forfeit £200, and his office or place should become void.

Sec. 23. No oath should be required of any of His Majesty's subjects professing the Roman Catholic religion, for enabling them to hold or enjoy any real or personal property than such, if any, as might be by law required of any other of His Majesty's subjects, and the oath thereinbefore prescribed should exempt every such person, after taking and subscribing the same, from all disabilities, incapabilities, or penalties, and should be in substitution of any oath theretofore required for that purpose.

Sec. 25. Any such person as aforesaid holding judicial or civil office, who should attend any public meeting for religious worship other than the Established Church of England and Ireland, or Scotland, in the robe or with the insignia of his office, should, upon conviction thereof, forfeit such office and pay £50.

Sec. 28. Every Jesuit and every member of any other religious order, community, or society of the Church of Rome, bound by monastic or religious vows, who, at the commencement of that Act, should be within the United Kingdom, should, within six calendar months thereof, deliver to the Clerk of the Peace of the county or place where such person should reside a notice or statement containing the particulars, in the form set forth in the schedule to that Act, who should preserve it among the records, and transmit a copy thereof to the Lord Lieutenant of Ireland, if such person should reside there, or to one of His Majesty's Secretaries of State, if he

should reside in Great Britain, and if any such person should offend in the premises he should forfeit and pay to His Majesty for every calendar month during which he should remain in the United Kingdom without having delivered such notice or statement, £50.

Sec. 29. If any Jesuit or member aforesaid should after the commencement of that Act come into this realm, he should be guilty of a misdemeanour, and being thereof convicted, should be banished from the kingdom for his life.

Sec. 30 provided that if any natural-born subject of this realm should at the commencement of that Act be out of the realm, being a Jesuit or member as aforesaid, it should be lawful for such person to return into this realm, and thereupon within six calendar months should deliver such notice or statement in manner thereinbefore required, but if he should refuse or neglect to do so, he should forfeit and pay to His Majesty £50 for every calendar month during which he should remain in the United Kingdom without having delivered such notice or statement.

Sec. 31. It should be lawful for one of His Majesty's principal Secretaries of State, being a Protestant, by licence in writing signed by him, to grant permission to any Jesuit or member of any such religious order, community, or society as aforesaid to come into the United Kingdom, and to remain therein for not exceeding six calendar months, and to revoke such licence before the expiration thereof if he should think fit, and every such Jesuit or member as aforesaid who should not depart this realm within twenty days after the expiration or revocation of his licence and notice thereof in the last case, should be guilty of a misdemeanour and upon conviction thereof should be banished from the United Kingdom during his life.

Sec. 32. Annual statement of all licences granted as last aforesaid should be laid before both Houses of Parliament.

Sec. 33. In case any Jesuit or member of any such religious order, community, or society as aforesaid, should after the commencement of that Act within any part of the United Kingdom admit any person to become a regular ecclesiastic or brother or member of any such religious order, community, or society, or be aiding or consenting thereto, or should administer, or cause to be administered, or be aiding or assisting in the administering or taking of any oath, vow, or engagement purporting or intended to bind the person taking it to the rules, ordinances, or ceremonies of such religious order, community, or society, every person offending in the premises in England or Ireland should be guilty of a mis-

demeanour, and in Scotland should be punished by fine and imprisonment.

Sec. 34. In case any person should, after the commencement of that Act, within the United Kingdom, be admitted or become a Jesuit, or brother or member of any other such religious order, community, or society as aforesaid, such person should be guilty of a misdemeanour, and on conviction thereof should be banished from the kingdom for his life.

Sec 35. Any person convicted as aforesaid not departing from the United Kingdom within thirty days after sentence pronounced against him, might be conveyed by order of His Majesty by the advice of his Privy Council to such place out of the kingdom as he should direct.

Sec. 36. If any offender, convicted and sentenced as aforesaid should after the expiration of three calendar months therefrom be at large within any part of the United Kingdom, without lawful cause, being thereof lawfully convicted, he should be transported for his life to such place as His Majesty should appoint.

Sec. 37. Nothing therein contained should extend to any religious order, community, or establishment consisting of females bound by religious or monastic vows.

Sec. 40. That Act should commence and take effect at the expiration of ten days from the passing thereof.

SCHEDULE TO THE LAST ACT.

Date of the Registry.	Name of the Party.	Age.	Place of Birth.	Name of the Order, Community, or Society whereof he is a Member.	Name and usual Residence of the next immediate Superior of the Order, Community, or Society.	Usual Place of Residence of the Party.

On the King's death his brother William ascended the throne, on the 26th of June, A.D. 1830. Now was passed the Act for the better securing the charitable donations and bequests of His Majesty's subjects in Great Britain professing the Roman Catholic religion, 2 & 3 Will. IV. c. 115.

Sec. 1, after reciting that it was expedient to remove all doubts respecting the rights of His Majesty's subjects professing the Roman Catholic religion in England and Wales to acquire and hold property necessary for religious worship, education, and charitable purposes, enacted that from and after the passing of that Act His Majesty's subjects professing the Roman Catholic religion in respect to their schools, places for religious worship, education, and charitable purposes in Great Britain, and the property held therewith, and the persons employed in or about the same, should in respect thereof be subject to the same laws as the Protestant Dissenters were subject to in England.

Sec. 2 provided that in all cases where schoolmasters or other persons employed in such schools or places were, as a qualification for such employments, then required to take the oath of supremacy or the oath or declaration against Transubstantiation, and the invocation of saints and sacrifice of the Mass, or to receive the Sacrament of the Lord's Supper, any such schoolmaster professing himself to be a Roman Catholic should, in lieu of the qualification aforesaid for holding such employment, take the oath contained in the 10 Geo. IV c. 7 (last abstracted). S. 2.

Sec. 4 provided that nothing therein contained should repeal or alter the provisions of the last abstracted Act respecting the suppression or prohibition of the religious or other societies of the Church of Rome bound by monastic or religious vows.

Sec. 5 provided that all property to be acquired or held by Roman Catholics for religious worship, education, and charitable purposes should be subject to the provisions of 9 Geo. II. c. 36 (Charitable Uses Act), *post* .

On the 17th day of August, A.D. 1836, was passed the Act for enabling the members of Nonconformist places of worship to perform the rite of marriage therein, intituled, "An Act for Marriages in England," 6 & 7 Will. IV. c. 85.

Sec. 18 enacted that any proprietor or trustee of a separate building, certified according to law as a place of religious worship, might apply to the Superintendent Registrar of the district in order that such building might be registered for solemnizing marriages therein, and, in such case, should deliver to the Superintendent Registrar a certificate, signed in duplicate by 20 householders at

the least, that such building had been used by them during one year at the least as their usual place of public religious worship, and that they were desirous that such place should be registered as aforesaid, each of which certificates should be countersigned by the proprietor or trustee, by whom the same should be delivered, and the Superintendent Registrar should send both certificates to the Registrar-General, who should register such building accordingly in a book to be kept for that purpose at the General Register Office; and the Registrar-General should indorse on both certificates the date of the registry, and should keep one certificate with the other records of the General Register Office and should return the other certificate to the Superintendent Registrar, who should keep the same with the other records of his office, and the Superintendent Registrar should enter the date of the registry of such building in a book to be furnished to him for that purpose by the Registrar-General, and should give a certificate of such registry under his hand on parchment or vellum to the proprietor or trustee by whom the certificates were countersigned, and should give public notice of the registry thereof by advertisement in some newspaper circulating within the county and in the "London Gazette," and for every such entry, certificate, and publication, the Superintendent Registrar should receive at the time of delivery to him of the certificates the sum of £3.

Sec. 19 enacted that if at any time subsequent to the registry of any building for solemnizing marriages therein it should be made to appear to the satisfaction of the Registrar-General that such building had been disused for the public religious worship of the congregation on whose behalf it was registered as aforesaid, the Registrar-General should cause the registry thereof to be cancelled. Provided that if it should be proved to the satisfaction of the Registrar-General that the same congregation used instead thereof some other such building for the purpose of public religious worship the Registrar-General might substitute and register such new place of worship instead of the disused building although such new place of worship might not have been used for that purpose during one year then next preceding, and every application for cancelling the registry of any such building or for such substitution and registry of a substituted building should be made to the Registrar-General by or through the Superintendent Registrar of the District, and such cancel or substitution when made should be made known by the Registrar-General to the Superintendent Registrar, who should enter the fact and the date thereof in the book provided for the registry of such buildings, and should certify and publish such cancel or substitution and registry in manner hereinbefore provided

in the case of the original registry of the disused building, and for every such substitution the Superintendent Registrar should receive at the time of the delivery of the certificate from the party requiring the substitution the sum of £3, and after such cancel or substitution should have been made by the Registrar-General it should not be lawful to solemnize any marriage in such disused building unless the same should be again registered in the manner hereinbefore provided.

Nearly all the old statutes which imposed heinous punishment and severe penalty on the free exercise of religious worship were practically obsolete, owing to the advance of opinion in more enlightened times, but in A.D. 1846, the legislature passed an Act for their express repeal, intituled "An Act to relieve Her Majesty's subjects from certain penalties and disabilities in regard to religious opinions," 9 & 10 Vic. c. 59.

Sec. 1 enacted that from and after the commencement of that Act the statutes or ordinances and the several Acts thereinafter mentioned, or so much thereof as was thereinafter specified, should be repealed, viz.:—The statute or ordinance of the fifty-fourth and fifty-fifth years of the reign of King Henry III., and the statute or ordinance commonly called *Statutum Judæismo*. Also, so much of an Act passed in the fifth and sixth years of the reign of King Edward VI., intituled An Act for the uniformity of service and administration of Sacraments throughout the Realm, as enacted that from and after the Feast of All Saints next coming, all and every person and persons inhabiting within this Realm, or any other the King's Majesty's dominions, should diligently and faithfully, having no lawful or reasonable excuse to be absent, endeavour themselves to resort to their parish church or chapel accustomed, or upon reasonable let thereof, to some usual place where common prayer and such service of God should be used in such time of let, upon every Sunday and other days ordained and used to be kept as holy days, and then and there to abide orderly and soberly during the time of common prayer, preachings, or other service of God there to be used and ministered, upon pain of punishment by the censures of the Church, so far the same affected persons dissenting from the worship or doctrines of the United Church of England and Ireland, and usually attending some place of worship other than the Established Church, provided always that no pecuniary penalty shall be imposed upon any person by reason of his so absenting himself as aforesaid. Also

54 & 55 Henry III.

5 & 6 Edward VI. c. 1, ss. 1, 2, 3, 4, 6

so much of the said Acts as enacted that if any manner of person or persons inhabiting and being within this Realm, or any other the King's Majesty's dominions, should, after the Feast of All Saints, willingly and wittingly hear and be present at any other form of common prayer, of administration of the Sacraments, of making of ministers in the churches, or of any other rites contained in the book annexed to that Act, than is mentioned and set forth in the said book, or that is contrary to the form of sundry provisions and exceptions contained in the aforesaid former statute, and should be thereof convicted, according to the laws of this realm, before the justices of assize, justices of oyer and determiner, justices of peace in their sessions, or any of them, by the verdict of twelve men, or by his or their own confession or otherwise, should, for the first offence suffer imprisonment for six months without bail or mainprize, and for the second offence, being likewise convicted as is aforesaid imprisonment for one whole year, and for the third offence in like manner, imprisonment during his or their lives. Also, so much of the said Act as enacted that for the more knowledge to be given hereof, and better observation of this law, all and singular curates shall, upon one Sunday every quarter of the year, during one whole year next following the aforesaid Feast of All Saints next coming, read that present Act in the church at the time of the most assembly, and likewise once in every year following at the same time, declaring unto the people by the authority of the Scripture, how the mercy and goodness of God hath, in all ages, been shown to His people in their necessities and extremities, by means of hearty and faithful prayers made to Almighty God, especially where people be gathered together with one faith and mind to offer up their hearts by prayer as the best sacrifice that Christian men could yield. Also, so much of any Act or Acts of the Parliament of Ireland as may have extended to Ireland the provisions of the said Act of the fifth and sixth years of the reign of King Edward VI., so far as the same was thereby repealed. Also, so much of an Act passed in the first year of the reign of Queen Elizabeth, intituled "An Act to restore to the Crown the Ancient Jurisdiction over the Estate Ecclesiastical and Spiritual, and abolishing all foreign powers repugnant to the same," and of an Act of the Parliament of Ireland, passed in the second year of the same Queen's reign, intituled "An Act restoring to the Crown the Ancient Jurisdiction of the State, Ecclesiastical and Spiritual, and abolishing all forreinne power repugnant to the same as made it punishable to affirm, hold, stand with, set forth, maintain, or defend, as therein is mentioned, the authority, pre-eminence, power, or jurisdiction, spiritual or ecclesiastical of any foreign prince, prelate, person, state, or potentate theretofore claimed,

Eliz. c. 1.

Eliz. c. 1.

used, or usurped within this realm, or any dominion or country being within or under the power, dominion, or obeisance of Her Highness, or to put in use or execute any thing for the extolling, advancement, setting forth, maintenance, or defence of any such pretended or usurped jurisdiction, power, pretence, and authority, or any part thereof, or to abet, aid, procure, or counsel any person so offending; provided always and be it declared that nothing in that enactment contained should authorize or render it lawful for any person or persons to affirm, hold, stand with, set forth, maintain, or defend any such foreign power, pre-eminence, jurisdiction, or authority nor should the same extend further than to the repeal of the particular penalties and punishments therein referred to; but in all other respects the law should continue the same as if that enactment had not been made. Provided further that if any person in holy orders according to the rites and ceremonies of the United Church of England and Ireland should affirm, hold, stand with, set forth, maintain, or defend any such foreign power, pre-eminence, jurisdiction, or authority, such person should be incapable of holding any ecclesiastical promotion, and in possession of any such promotion might be deprived thereof by due course of law in the same manner as for any other cause of deprivation. Also, so much of another Act passed in the first year of the same Queen's reign, intituled An Act for the uniformity of common prayer and service in the Church and administration of the Sacraments; and of another Act of the Parliament of Ireland, passed in the second year of the same Queen's reign, intituled An Act for the uniformity of common prayer and service in the Church, and the administration of the Sacraments as relates to persons resorting to their parish church or chapel accustomed, or upon reasonable let thereof to some usual place where common prayer and such service of God as in such Acts are mentioned are used in such time of let upon Sundays and other days ordained and used to be kept as holy days, and to his then and there abiding orderly and soberly during the time of the common prayer, preaching, or other service of God there used and ministered. Also, an Act passed in the fifth year of the same Queen's reign, intituled "An Act for the assurance of the Queen's Royal power over all estates and subjects within her dominions." Also, an Act passed in the thirteenth year of the same Queen's reign, intituled "An Act against the bringing in and putting in execution of bulls, writings, or instruments, and other superstitious things from the See of Rome," so far only as the same imposed penalties or punishments therein-mentioned; but it was thereby declared that nothing in that enactment contained should authorize or render it lawful for any person or persons to

1 Eliz. c. 2.

2 Eliz. c. 2.

5 Eliz. c. 1.

13 Eliz. c. 2.

import, bring in, or put in execution within this realm any such bulls, writings, or instruments, and that in all respects, save as to the said penalties or punishments, the law should continue the same as if that enactment had not been made. Also, an Act passed in the
29 Eliz. c. 6. twenty-ninth year of the same Queen's reign, intituled, An Act for the more speedy and due execution of certain branches of the statute made in the twenty-third year of the Queen's Majesty's reign, intituled, An Act to retain the Queen's Majesty's subjects in their due obedience. Also, an Act passed in the first year of the reign of King James
1 Jac. I. c. 4. I., intituled, An Act for the due execution of the statutes against Jesuits, Seminary Priests, Recusants, &c. Also, so much of an Act
3 Jac. I. c. 1. passed in the third year of the reign of the said King James I. intituled An Act for a public thanksgiving to Almighty God every year on the 5th day of November, as enacted that all and every person and persons inhabiting this realm of England, and the dominions of the same, should always upon that day diligently and faithfully resort to the parish church or chapel accustomed, or to some usual church or chapel where the said morning prayer, preaching, or other service of God should be used, and then and there to abide orderly and soberly during the time of the said prayers, preaching, or other service of God there to be used and ministered. Also, an Act
3 Jac. I. c. 4. passed in the said third year of the said King James's reign, intituled "An Act for the better discovering and repressing of Popish
7 Jac. I. c. 6. recusants." Also, an Act passed in the seventh year of the same King's reign, intituled "An Act for administering the oath of allegiance and reformation of married women recusants." Also, so much of an
13 & 14 Car. II. c. 4. Act passed in the thirteenth and fourteenth years of the reign of King Charles II., intituled "An Act for the uniformity of public prayers and administration of sacraments and other rites and ceremonies, and for establishing the form of making, ordaining, and consecrating Bishops, Priests, and Deacons in the Church of England as makes any schoolmaster or other person instructing or teaching youth in any private house or family as a tutor or schoolmaster punishable for instructing or teaching any youth as a tutor or schoolmaster before licence obtained from his respective Archbishop, Bishop, or Ordinary of the diocese, according to the laws and statutes of this realm, and before such subscription and acknowledgment made as in the said Act is mentioned." Also so much of the last-mentioned Act whereby any Act or part of any Act thereinbefore repealed had been revived. Also so much of any Act or Acts whereby the parts of the said Act of 13 & 14 Chas. II. thereinbefore repealed had been revived. Also so much of the Act of the Irish
17 & 18 Car. II. c. 6. Parliament 17 & 18 Chas. II. as required the schoolmasters or other persons teaching youth in private houses or families as tutors or

schoolmasters should take the Oath of Allegiance and Supremacy and as made such persons punishable for so instructing youth before licence obtained from their Archbishop or Bishop and before such subscription and acknowledgement made as therein mentioned. Also so much of an Act passed in the thirtieth year of the reign of the said King Charles, intituled "An Act for the more effectual preserving of the King's person and Government by disabling Papists from sitting in either House of Parliament, as enacted that every person now or hereafter convicted of Popish recusancy who hereafter should at any time after the said first day of December come advisedly into or remain in the presence of the King's Majesty or Queen's Majesty, or should come into the court or house where they or any of them reside, as well during the reign of His present Majesty (whose life God long preserve) as during the reigns of any of his Royal successors, Kings or Queens of England, should incur and suffer all the pains and penalties, forfeitures and disabilities in that Act mentioned or contained." Also, an Act of the Parliament of Scotland passed in the eighth and ninth session of the first Parliament of King William III., intituled "An Act for preventing the growth of Popery, and all laws, statutes, and Acts of Parliament, revived, ratified, and perpetually confirmed by the said Act of King William's first Parliament, except as to the form of the formula in such last mentioned Act contained. Also, an Act passed in the eleventh and twelfth years of the reign of the said King William III., intituled "An Act for the further preventing the Growth of Popery." Also, an Act passed in the first year of the reign of Queen Anne, intituled "An Act to oblige Jews to maintain and provide for their Protestant children." Also, so much of an Act of the Parliament of Ireland passed in the second year of the reign of the said Queen Anne, intituled "An Act to prevent the further Growth of Popery," as enacted that if any person or persons should seduce, persuade, or pervert, any person or persons professing, or that should profess, the Protestant religion, to renounce, forsake, or abjure the same and to profess the Popish religion, or reconcile him or them to the Church of Rome, then and in such case every such person and persons so seducing, as also every such Protestant and Protestants who should be so seduced, perverted, and reconciled to Popery should for the said offences, being thereof lawfully convicted, incur the danger and penalty of praemunire mentioned in the Statute of Praemunire made in England in the sixteenth year of the reign of King Richard II. Also, so much of the said last-mentioned Act of Queen Anne as empowered the Court of Chancery to make such order for the maintenance of Protestant children not maintained by their Popish

30 Car. II. St. 2.

8 & 9 Will III. c. 3.

11 & 12 Will. III. c. 4.

2 Anne, c. 6.

parents suitable to the degree and ability of such parents, and to the age of such child, and also for the portions of Protestant children to be paid at the decease of their Popish parents as that court should adjudge fit, suitable to the degree and ability of such parents, and as empowered the said court to make such order for the educating in the Protestant religion the children of Papists where either the father or mother of such children should be Protestants till the age of 18 years of such children as to that court should seem meet, and in order thereto to limit and appoint, where and in what manner and by whom such children should be educated, and as enacted that the father of such children should pay the charges of such education as should
11 Geo. II. c. 17 be directed by the said court. And an Act passed in the eleventh year of the reign of King George II., intituled "An Act for securing the Estates of Papists conforming to the Protestant Religion against disabilities created by several Acts of Parliaments relating to Papists, and for rendering more effectual the several Acts of Parliament made for vesting in the two Universities in that part of Great Britain called England the presentation of benefices belonging to Papists, except so much of the said Act as relates to any advowson, or right of presentation, collation, nomination, or donation of or to any benefice, prebend, or ecclesiastical living, school, hospital, or donative, or any grant or avoidance thereof, or any admission, or institution, or induction to be made thereupon, but so as that the repeal of the said Act should not in any wise affect or prejudice the right, title, or interest of any person in or to any lands, tenements, or hereditaments under and by virtue of the provisions of the said Act at the time of such repeal. Also, so much of an Act of the
17 & 18 Geo. III. c. 49. Parliament of Ireland passed in the seventeenth and eighteenth years of the reign of King George III., intituled "An Act for the relief of His Majesty's subjects of this Kingdom professing the Popish Religion," as enacted that no maintenance or portion should be granted to any child of a Popish parent upon a bill filed against such parent pursuant to the aforesaid Act of the second of Queen Anne, out of the personal property of such Papist, except out of such leases which they may hereafter take under the powers granted
18 Geo. III. c. 60. in that Act. Also, so much of an Act passed in the eighteenth year of the reign of the said King George III., intituled An Act for relieving His Majesty's subjects professing the Popish religion from certain penalties and disabilities imposed on them by an Act made in the eleventh and twelfth years of the reign of King William III., intituled "An Act for the further preventing the growth of Popery;" as enacted that nothing in that Act contained should extend or be construed to extend to any Popish Bishop, Priest, Jesuit, or schoolmaster

who should not have taken and subscribed the above oaths in the above words before he should have been apprehended or any prosecution commenced against them. Also, so much of an Act of Parliament of Ireland passed in the twenty-third and twenty-fourth years of the reign of the said King George III., intituled An Act for extending the provisions of an Act passed in this Kingdom the nineteenth and twentieth years of His Majesty's Reign, intituled An Act for naturalizing such Foreign Merchants, Traders, Artificers, Artisans, Manufacturers, Workmen, Seamen, Farmers, and others, as should settle in this Kingdom, as excepted out of the benefit of the Act, persons professing the Jewish religion. Also, so much of an Act passed in the thirty-first year of the reign of the said King George III., intituled An Act to relieve upon conditions and under restrictions the persons therein described from certain penalties and disabilities to which Papists or persons professing the Popish religion were by law subject, as enacted that nothing therein contained should be construed to give any ease, benefit, or advantage to any person who should, by preaching, teaching, or writing, deny or gainsay the oath of allegiance, abjuration, and declaration hereinbefore mentioned and appointed to be taken as aforesaid, or the declarations therein contained, or any of them. Also, so much of the last-mentioned Act as provided and enacted "that no schoolmaster professing the Roman Catholic religion should receive into his school for education the child of any Protestant father." Also, so much of the last-mentioned Act as provided and enacted that no person professing the Roman Catholic religion should be permitted to keep a school for the education of youth until his or her name and description as a Roman Catholic schoolmaster or schoolmistress should have been recorded at the quarter or general sessions of the peace for the county or other division or the place where such school should be situated by the clerk of the peace of the said court, who is hereby required to record such name and description accordingly upon demand by such person, and to give a certificate thereof to such person as should at any time demand the same, and no person offending in the premises should receive any benefit of that Act. Also, so much of the Act of the Parliament of Ireland passed in the thirty-third year of the reign of the said King George III., intituled An Act for the relief of His Majesty's Popish or Roman Catholic subjects of Ireland, as provided that no Papist or Roman Catholic, or person professing the Roman Catholic or Popish religion, should take any benefit by or under that Act, unless he should have first taken and subscribed the oath and declaration in that Act contained and set forth, and also the said oath appointed by the said Act passed in the thirteenth and fourteenth years of His Majesty's

23 & 34 Geo. III. c. 38.

31 Geo. III. c. 32

3 Geo. III. c. 21.

reign intituled An Act to enable His Majesty's subjects of whatever persuasion to testify their allegiance to him in some one of His Majesty's four courts in Dublin, or at the general sessions of the peace, or at any adjournment thereof, to be holden for the county, city, or borough wherein such Papist or Roman Catholic, or person professing the Roman Catholic or Popish religion, did inhabit or dwell, or before the going judge or judges of assize in the county wherein such Papist or Roman Catholic, or person professing the Roman Catholic or Popish religion did inhabit and dwell, in open court. Also, an Act passed in the said thirty-third year of the reign of the said King George III., intituled An Act for requiring a certain form of oath of abjuration and declaration from His Majesty's subjects professing the Roman Catholic religion in that part of Great Britain called Scotland.

33 Geo. III. c. 44.

Sec. 2 enacted that from and after the commencement of that Act Her Majesty's subjects professing the Jewish religion in respect of their schools, places for religious worship, education, and charitable purposes, and the property held therewith, should be subject to the same laws as Her Majesty's Protestant subjects dissenting from the Church of England were subject to, and not further or otherwise.

Sec. 4 enacted that from and after the commencement of that Act all laws then in force against the wilfully and maliciously or contemptuously disquieting or disturbing any meeting, assembly, or congregation of persons assembled for religious worship permitted or authorized by any former Act or Acts of Parliament, or the disturbing, molesting, or misusing any preacher teacher or person officiating at such meeting, assembly, or congregation, or any person or persons there assembled, should apply to all meetings, assemblies, or congregations of persons lawfully assembled for religious worship, and the preachers, teachers, or persons officiating at the same, and the persons there assembled.

In 1855 was passed "An Act to amend the Law concerning the certifying and registering of Places of Religious Worship in England," 18 & 19 Vic. c. 81.

Sec. 1 recited the statutes 1 Will. & Mary, c. 1, 52 Geo. III. c. 155, 31 Geo. III. c. 32, 2 & 3 Will. IV. c. 115, 9 & 10 Vic. c. 59, and 15 & 16 Vic. c. 36, s. 4, and repealed the Act 15 & 16 Vic. c. 36.

Sec. 2 enacted that every place of meeting for religious worship of Protestant Dissenters or Protestants, and of persons professing the Roman Catholic religion might be certified in writing to the Registrar-General of Births, Deaths, and Marriages in England,

through the Superintendent Registrar of the district in which such place of worship might be situate, in the manner and form, &c., in the schedule to the Act.

Sec. 3 declared that the Registrar-General should, in a book, keep a record of every such registry which, subject to the provisions therein contained, should have the same force and effect as if such place of worship had been certified and registered, or recorded pursuant to the repealed statutes.

Sec. 6 provided for notice to be given to the Registrar-General of every place of worship becoming discontinued for the purposes for which it was certified.

Sec. 10 declared that nothing therein contained should affect the churches and chapels of the United Church of England and Ireland.

Sec. 11 provided for delivery by the Registrar-General of a certificate of the registry of any place of worship to any person on payment of a fee of 2s. 6d.

Sec. 12 declared that notwithstanding that or any other Act all marriages which had been solemnized in any building registered pursuant to 6 & 7 Will. IV. c. 85, but which might not have been certified as required by that or any other Act should be valid.

In the same year was passed an Act for securing the liberty of religious worship, 18 & 19 Vic. c. 86.

Sec. 1, after reciting the statutes 1 Will. & Mary, c. 18; 52 Geo. III. c. 155, and the repealed Act 15 & 16 Vic. c. 36, declared that nothing contained in the said Acts or any of them should apply to the congregations or assemblies thereinafter mentioned, or any of them, viz.:—

1. To any congregation or assembly for religious worship held in any parish or ecclesiastical district, and conducted by the incumbent, or in case the incumbent is not resident by the curate of such parish or district, or by any person authorized by them respectively.

2. To any congregation or assembly for religious worship meeting in a private dwelling-house, or on the premises belonging thereto.

3. To any congregation or assembly for religious worship, meeting occasionally in any building or buildings not usually appropriated to purposes of religious worship.

And no person permitting any such congregation to meet as therein

mentioned in any place occupied by him should be liable to any penalty for so doing.

Sec. 2 declared that so much of the Act 2 & 3 Will. IV. c. 115, as enacted that His Majesty's subjects professing the Roman Catholic religion in respect of their places for religious worship should be subject to the same laws as Protestant Dissenters, and so much of 9 & 10 Vic. c. 59, as enacted that His Majesty's subjects professing the Jewish religion in respect to their places for religious worship should be subject to the same laws as Protestant Dissenters should be read respectively as applicable to the laws to which Protestant Dissenters in England were subject after the passing of that Act.

The statute 23 & 24 Vic. c. 32, intituled "An Act to abolish the jurisdiction of the Ecclesiastical Courts in Ireland in cases of Defamation, and in England and Ireland in certain cases of Brawling," contains the following enactment, viz:—

Sec. 2. That any person who should be guilty of riotous, violent, or indecent behaviour in any cathedral, church or chapel of the Church of England, or in any place of religious worship duly certified under the Act 18 & 19 Vic. c. 81. whether during the celebration of Divine service or at any other time, or in any church or burial-ground, or who should molest, let, disturb, vex, or trouble, or by any other unlawful means disquiet or misuse any preacher duly authorized to preach therein, or any clergyman in holy orders ministering or celebrating any Sacrament or any Divine service, rite, or office, in any cathedral, church or chapel, or in any churchyard or burial-ground should be liable on conviction thereof before two justices of the peace to a penalty of not exceeding £5, or at the discretion of the justices to imprisonment not exceeding two calendar months.

Sec. 3 empowered any constable or churchwarden of the parish or place where the said offence should be committed, forthwith to apprehend the offender and take him before the justices to be dealt with according to law.

Sec. 4 allows an appeal to the next Quarter Sessions of the Peace by the person convicted.

In the year 1860 was passed the Act to amend the Act of the twenty-first and twenty-second years of Vic. c. 49, for the relief of Her Majesty's subjects professing the Jewish religion, 23 & 24 Vic. c. 63.

Sec. 1 enacted that whenever the House of Commons should order that any resolution agreed to pursuant to s. 1 of 21 & 22 Vic. c. 49, should be a Standing Order of the House, any Member professing the Jewish religion might thenceforth be sworn pursuant thereto, and it should be lawful for such Member in taking the oath which by 21 & 22 Vic. c. 48, was substituted for the oath of allegiance, supremacy, and abjuration, to omit the words: "And I make this declaration upon the true faith of a Christian," which oath so modified should be sufficient to enable such Member to sit and vote in the House of Commons.

In 1866 was passed "An Act to render it unnecessary to make and subscribe certain Declarations as a Qualification for Offices and Employments;" 29 Vic. c. 22.

Sec. 1 enacted that it should not be obligatory for any person who should thereafter be placed, elected, or chosen in or to the office of mayor, alderman, recorder, bailiff, town clerk, or common councilman, or in or to the office of magistracy, or place, trust, or employment relating to the government of any city, corporation, borough, or cinque port within England and Wales, either upon or after his admission into any of the aforesaid offices or trusts, or for any person who should thereafter be admitted into any office or employment, or who should accept from Her Majesty, her heirs or successors, any patent, grant, or commission to make and subscribe any declaration prescribed by the following Acts—viz., 6 Geo. IV. c. 17, 1 & 2 Vic. c. 15, 8 & 9 Vic. c. 52.

Sec. 2 indemnified every person who before the passing of the Act had omitted to make and subscribe any declaration prescribed by the said Act, or otherwise to qualify themselves as therein required.

In 1868 was passed the "Act for the Abolition of Compulsory Church Rates;" 31 & 32 Vic. c. 109.

After reciting that church rates had for some years ceased to be made or collected in many parishes by reason of the opposition thereto, and that it was expedient that steps to compel payment of church rates by legal process should be abolished—

Sec. 1 enacted that from and after the passing of that Act no suit should be instituted or proceeding taken in any ecclesiastical or other court, or before any justice or magistrate, to enforce or compel the payment of any church rate made in any parish in England or Wales.

Sec. 2 excepted from the operation of the Act rates called church rates made for secular purposes.

Sec. 3 enabled church rates on which money was advanced as security and owing at the time of the passing of the said Act, and s. 4 added thereto any church rate then already made to be recovered by process of law.

Sec. 5 exempted from the operation of that Act church rates made under any private or local Act of Parliament, in lieu or consideration of the extinguishment or appropriation to any other purpose of tithes, customary payments, or other charge upon property, which had been appropriated by law to ecclesiastical purposes, or upon any contract made for good or valuable consideration.

Sec. 6 declared that the Act should not affect vestries or the making, assessing, or receiving, or otherwise dealing with any church rate, save in so far as related to the recovery thereof.

Sec. 7 enabled all bodies corporate, trustees, guardians, and committees, who or whose cestuis que trust were in the occupation of any lands, houses, or tenements, to pay any church rate made in respect of such property, and the same should be allowed in their accounts.

Sec. 8 disqualified every person who should make default in paying the amount of a church rate for which he was rated, voting in respect of the expenditure of the moneys arising therefrom.

The Elementary Education Act, 1870, 33 & 34 Vic. c. 75, s. 7, enacted: 1. It should not be required as a condition of any child being admitted into or continuing in the school, that he should attend or abstain from attending any Sunday school or any place of religious worship, or that he should attend any religious observance, or any instruction in religious subjects in the school or elsewhere,

from which observance or instruction he might have been withdrawn by his parent, or that he should, if so withdrawn, attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belonged. 2. Any such religious observance or instruction should be at the beginning or end of the school meeting, and be inserted in a time table approved by the Education Department, and be conspicuously fixed in the schoolroom, and any scholar might be withdrawn by his parent from such religious observance or instruction without forfeiting any of the other benefits of the school. 3. The school should be open to the inspection of Her Majesty's inspector, but he should not, as part of his duty, inquire into any instruction in religious subjects, or examine any scholar therein in religious knowledge, or in any religious subject or book.

In 1871 was passed the Act to alter the law respecting religious tests in the Universities of Oxford, Cambridge, and Durham, and in the halls and colleges of those Universities, 34 Vic. c. 26.

After reciting that it was expedient that the benefits of the Universities of Oxford, Cambridge, and Durham, and of the colleges and halls subsisting therein as places of religion and learning, should be rendered freely accessible to the nation, s. 3 enacted that from and after the passing of that Act no person should be required, upon taking, or to enable him to take, any degree other than a degree in divinity, within the Universities of Oxford, Cambridge, and Durham, or any of them, or upon exercising or to enable him to exercise any of the rights and privileges which might theretofore or might thereafter be exercised by graduates in the Universities or in any college therein, or upon taking or holding, or to enable him to take or hold any office therein, or upon teaching or to enable him to teach therein, or upon opening or to enable him to open a private hall or hostel therein for the reception of students, to subscribe any article or formulary of faith, or to make any declaration or take any oath respecting his religious belief, or profession, or to conform to any religious observance, or to attend or abstain from attending any form of public worship, or to belong to any specified church, sect, or

denomination, nor should any person therein be compelled to attend the public worship of any church, sect, or denomination to which he did not belong. Provided that nothing in the Act should render a layman or person not a member of the Church of England eligible to any office, or capable of exercising any right or privilege which by any Act or ordinance was restricted to persons in holy orders. And nothing in that section should open any office to any person not a member of the Church of England where such office was confined to the latter by reason of any degree as aforesaid being a qualification therefor.

Sec. 4. Nothing in that Act should interfere with or affect any further or otherwise than was thereby enacted the system of religious instruction, worship, and discipline which then was or thereafter might be lawfully established in the said universities or in the colleges thereof, or any of them, or the statutes and ordinances of the said universities and colleges relating to such instruction, worship, and discipline.

Sec. 5. The governing body should provide sufficient religious instruction for all members in *statu pupillari* belonging to the Established Church.

Sec. 6. Morning and evening prayers, according to the Book of Common Prayer, should continue to be used daily as theretofore in the chapel of every college subsisting at the passing of that Act in any of the said universities, but an abridgment or adaptation thereof might be used on weekdays at the request of the governing body.

Sec. 7. No person should be required to attend any college or university lecture to which he, if of full age, or if not, his parent or guardian, should object upon religious grounds.

34 & 35 Vic. c. 87, "An Act to amend the Law with respect to Prosecutions for Offences against the Act of the twenty-ninth year of the reign of King Charles II. c. 7, intituled 'An Act for the better observation of the Lord's Day, commonly called Sunday,'" 17th August, 1871.

Be it enacted as follows:—

1. No prosecution or other proceeding shall be instituted against any person, or the property of any person, for any offence committed by him under the Act of the twenty-ninth year of the reign of King Charles II. c. 7, intituled "An Act for the better observation of the Lord's Day, commonly called Sunday," or for the recovery of any forfeiture or penalty for any such offence, except by or with the consent in writing of the chief officer of police of the police district

in which the offence is committed, or with the consent in writing of two justices of the peace, or a stipendiary magistrate having jurisdiction in the place where such offence is committed. No such prosecution shall be heard before the justices of the peace or stipendiary magistrate by whom or with whose consent the same has been instituted.

2. In this Act the term "police district" means the districts mentioned in the schedule to this Act, and the term "chief officer of police" means the officers mentioned in relation to each district in that schedule; all the police under one chief constable shall be deemed to constitute one force for the purposes of this Act.

3. This Act may be cited as "The Sunday Observation Prosecution Act, 1871."

4. This Act shall continue in force until the 1st day of September, 1872, and no longer (*c*)

SCHEDULE.

Police District.	Chief Officer of Police.
The City of London and the liberties thereof, exclusive of Southwark.	The Commissioner of Police of the City.
The Metropolitan Police District.	The Commissioner of Police of the Metropolis.
Any county, any riding, parts, division, or liberty of county; any borough or town maintaining a separate police force.	The Chief Constable, or Head Constable, or other officer, by whatever name called, having the chief command of the police in the police district.

38 & 39 Vic. c. 80, "An Act to amend the Act of the twenty-first year of the reign of King George III. c. 49, intituled 'An Act for preventing certain Abuses and Profanations on the Lord's Day, called Sunday,' and for further amending the Law concerning the Remission of Penalties," 13th August, 1875.

Whereas it is expedient to amend the said Act, and to provide for the remission of certain penalties, be it enacted as follows :—

1. Whereas doubts are entertained as to the power of the Crown (*d*) to remit penalties and forfeitures incurred under the said Act of the twenty-first year of the reign of King George III. c. 49, by reason of its being contended that the power of the Crown to remit such penalties and forfeitures does not extend to penalties and

forfeitures recovered in penal actions, and it is expedient to remove such doubts, be it therefore enacted that—

> "It shall be lawful for Her Majesty to remit in whole or in part any penalty, fine, or forfeiture imposed or recovered for any offence under the said Act, whether on indictment, information, or summary conviction, or by action or any other process." (*e*)

2. This Act may be cited as "The Remission of Penalties Act, 1875."

(*c*) The Act has been continued by successive "Expiring Laws Continuance Acts."

(*d*) *See* 22 Vic. c. 32, by which penalties imposed on "convicted offenders" may be remitted, although the penalty may be payable to some party other than the Crown.

(*e*) Judgment recovered by default by a friendly informer is no answer to a prior action by a hostile one, although the object of the defendant and the friendly informer may be to see whether and how far the power of remission given by this section will be exercised (Girdlestone *v.* Brighton Aquarium Co., 3 Ex. D. 137).

In 1880 was passed the Act to amend the Burial Laws, 43 & 44 Vic. c. 41.

Sec. 1 enacted that after the passing of the Act any relative, friend, or legal representative having the charge of or being responsible for the burial of a deceased person might give 48 hours' notice in writing, indorsed on the outside "Notice of Burial," to or leave or cause the same to be left at the usual place of abode of the rector, vicar, or other incumbent, or in his absence, the officiating minister of any parish, or ecclesiastical district, or place, or any person appointed by him to receive such notice that it was intended that such deceased person should be buried within the churchyard or graveyard of such parish or ecclesiastical district or place without the performance, in the manner prescribed by law, of the Service for the Burial of the Dead according to the rites of the Church of England, and, after receiving such notice, no rector, vicar, incumbent, or officiating minister, should be liable to any censure or penalty, ecclesiastical or civil, for permitting any such burial as aforesaid. Such notice should be in writing, plainly signed with the

name, and stating the address of the person giving it, and be in the form or to the effect of Schedule A to the Act.

The word graveyard should include any burial-ground or cemetery vested in any burial board, or in which the parishioners or inhabitants of any parish or ecclesiastical district had rights of burial, and in case of any such burial-ground or cemetery if a chaplain were appointed to perform the Burial Service of the Church of England therein, notice under that Act should be addressed to such chaplain, but given to or left at the office of the clerk of the burial board, and the proprietors or directors of any proprietary cemetery or burial-ground might make byelaws or regulations for enabling any burial to take place therein according to the provisions of that Act.

Sec. 2. Such notice, in the case of a pauper deceased, might be given to such rector, vicar, or incumbent, and to the master of the workhouse or guardians, by the husband, wife, or next of kin of the deceased.

Sec. 3. Such notice should state the day and hour when such burial was proposed to take place, which, if inconvenient, owing to some other service having been before the receipt of such notice appointed to take place in such churchyard or graveyard, or the church or chapel connected therewith, or by reason of the byelaws or regulations limiting the times at which burials might take place the person receiving the notice should, unless some other time should be mutually arranged, within 24 hours from the time of giving or leaving such notice signify in writing to be delivered to or left at the address or usual place of abode of the person from whom such notice had been received, or at the house where the deceased should be lying at which hour of the day named in the notice, or (in case of burial in a churchyard, if such day should be a Sunday, Good Friday, or Christmas Day) of the day next following such burial should take place. Unless mutually arranged, the time of such burial should be between 10 a.m. and 6 p.m., between the 1st April and 1st October, and between 10 a.m. and 3 p.m. between 1st October and 1st April.

Sec. 4. When no such intimation of change of hours was given, the burial should take place in accordance with and at the time specified in the notice first before mentioned.

Sec. 5. All regulations as to the grave applicable to a burial, according to the service of the Church of England, should be in force as to burials under that Act, and the minister performing the Burial Service should receive the same fee as a clergyman of the Church of England.

Sec. 6. At any burial under that Act, all persons should have

free access to the churchyard or graveyard: the burial might take place at the option of the person having the charge thereof, without any religious service, or with such Christian and orderly religious service at the grave as such person should think fit, and any person duly authorized might conduct such service. The words "Christian service" should include every religious service used by any church, denomination, or person professing to be Christian.

Sec. 7. All burials under that Act, whether with or without a religious service, should be conducted in a decent and orderly manner, and every person guilty of any riotous, violent, or indecent behaviour at or wilfully obstructing such burial or service, or who should in any such churchyard or graveyard deliver any address, not being part of or incidental to a religious service permitted by that Act, and not otherwise permitted by any lawful authority, or who should under colour of any religious service or otherwise in any such churchyard or graveyard wilfully endeavour to bring into contempt or obloquy the Christian religion, or the belief or worship of any church or denomination of Christians, or the members or any minister of any such church or denomination, or any other person, should be guilty of a misdemeanour.

Sec. 8. All powers and authorities by law for the preservation of order, and prevention and punishment of disorderly behaviour, in any churchyard or graveyard, might be exercised in any case of burial under that Act.

Sec. 9. Nothing in that Act should authorize the burial of any person in any place where such person would have had no right of interment if that Act had not passed, or without performance of any express condition on which by the terms of a trust deed any right of interment in any burial-ground vested in trustees thereunder might have been granted.

Sec. 10. Every person having the charge of any burial under the Act should, on the day thereof or the day next thereafter, transmit a certificate of the burial in the form or to the effect of Schedule B to the rector, vicar, incumbent, or other officiating minister in charge of the parish or district in which the churchyard or graveyard was situate or to which it belonged, or in the case of any burial ground or cemetery vested in a burial board to the person required by law to keep the register of burials therein, who should enter the same in the register of burials of such parish or district or of such burial-ground or cemetery. Any person who should wilfully make any false statement in such certificate, and any rector, vicar, or minister or other person as aforesaid receiving such certificate who should refuse or neglect duly to enter such burial in such register, should be guilty of a misdemeanour.

Sec. 11. Every order of a coroner or certificate of a registrar given under the Births and Deaths Registration Act, 1874, s. 17, should, in case of a burial under that Act, be delivered to the relative, friend, or legal representative of the deceased having charge of the burial instead of to the person who buried or performed the funeral or religious service, and any person to whom such order or certificate should have been given by the coroner or registrar who failed so to deliver the same should be liable to a penalty not exceeding £2, and any such relative, friend, or legal representative having charge of the burial under that Act, as to which no order or certificate under the same section should have been delivered to him, should within seven days after the burial give notice thereof in writing to the registrar, or in default, be liable to a penalty not exceeding £10.

Sec. 12. No minister in holy orders of the Church of England should be subject to any censure or penalty for officiating with the service prescribed by law for the burial of the dead according to the rites of the said church in any unconsecrated burial-ground or cemetery, or building thereon.

Sec. 13. Any minister in Holy Orders of the Church of England authorized to perform the burial service in any case where the office for the burial of the dead according to the rites of the Church of England may not be used, and in any other case at the request of the relative, friend, or representative having charge of the burial, may lawfully use such service from the book of Common Prayer and Holy Scripture, as the Ordinary may prescribe or approve.

Sec. 14. Save as in that Act provided nothing therein contained should authorize any minister of the Church of England who should not have become a declared member of any other church or denomination, or have executed a deed of relinquishment under the Clerical Disabilities Act, 1870, to do any act not authorized by law if that Act had not passed, or exempt him from censure or penalty.

Sec. 15. That Act should extend to the Channel Islands, but not to Scotland or Ireland.

SCHEDULE A.

Notice of Burial.

I, , of , being the relative [or friend, or legal representative, as the case may be, describing the relation if a relative] having the charge of, or being responsible for the burial of *A. B.*, of who, died at in the parish of on the day of do hereby give you notice that it is intended by me that the body

of the said *A. B.* shall be buried within the [here describe the churchyard or graveyard in which the body is to be buried] on the day of at the hour of without the performance in the manner prescribed by law of the Service for the Burial of the Dead according to the rites of the Church of England, and I give this notice pursuant to the Burial Laws Amendment Act, 1880.

To the Rector [or as the case may be] of .

SCHEDULE B.

I, of the person having the charge of [or being responsible for the burial] of the deceased, do hereby certify that on the day of *A. B.*, of , aged , was buried in the churchyard [or graveyard] of the parish [or district] of .

To the Rector [or as the case may be] of .

NOTE.—By the common law every person who died within a parish and was a baptized Christian, had a right of burial in the parish churchyard, and with the burial service of the Church of England. That Church did not permit its ministers to perform the burial service over the body of any person who was not baptized, or who was excommunicated, or who had committed suicide. Sec. 13 of 43 & 44 Vic. c. 41, enables, but does not compel, any minister of the Church of England to perform a burial service prescribed or approved by the Bishop, over the body of any such person as last mentioned. Sec. 12 enables ministers of the Church of England to perform the burial service of their Church over the body of any person who may be interred in any unconsecrated ground or cemetery, or any building thereon. Sec. 5 reserves to the incumbent the common law right to prohibit, or permit on proper conditions, the erection of a monument or tombstone over the grave of a person interred in the parish churchyard; but Lord Chancellor Cairns, delivering judgment in *Kent* v. *Smith*, 44 L. J., Ecc. L. R. Adm. & Ecc. 398; Appeal to Privy Council, 45 L. J., 10 P. C.; L. R. 1, P. C. 73, held that the incumbent must exercise his right of prohibition on *reasonable* grounds, such as unnecessary waste of land, &c., but that he could not lawfully prohibit the inscription of the word "Reverend" and "Wesleyan minister" to the name of a clergyman of the Wesleyan body on the monument erected over the grave of his child in the parish churchyard.

CHAPTER II.

THE LAW OF MORTMAIN AND CHARITABLE USES.

PROPERTY, real or personal, may be given or granted for any religious, educational, scientific, or charitable use. Real property and impure personalty, otherwise personal estate connected with realty, cannot be so given by will or testamentary disposition, but by deed or instrument *inter vivos* in compliance with the statute 9 Geo. II. c. 36, passed for restraining the disposition of land for charitable uses, called the Mortmain Act, and the subsequent statutes amending its provisions. Pure personalty may be so given by will or testamentary disposition. The property granted or given for a religious, educational, scientific, or charitable use, will be devoted to the object and in the manner stated in the deed or will creating the charity, according to its ordinary meaning and grammatical construction, assisted, if ambiguous, by the status and opinion of the donor and the law of the country then in force. This principle is well and soundly established by the judgments pronounced in the two leading cases on the subject—viz., Attorney-General *v.* Pearson, 3 Merivale 409, and Attorney-General *v.* Shore, and others—9 Clark & Finelly, 355, *in re* Lady Hewley's Charity, 23rd Dec., 1833, Reg. Lib. A., fol. 372, 3. In the former case a community of Protestant Dissenters had in A.D. 1701 established a chapel or meeting-house for the worship and service of God. The foundation deed directed that there should be twelve or more trustees, and that they or the

major part of them should from time to time, at any meeting to be holden upon matters relating to the trust, make such orders as they should think best, to be binding upon all parties. It further provided that if the meetings therein contemplated "for the service of God" should be prohibited by law, the trustees should sell the property, the subject of the charity, and apply the proceeds to other charitable uses. In A.D. 1720 additional land was granted for the support of the minister of the said chapel or meeting-house, and the deed of conveyance contained provision for another application of the property "if 1 Will. & Mary, c. 18, called the Toleration Act, should be repealed." A Bill of Complaint and Information were filed by the plaintiffs and relators, the surviving trustees, and the minister of the said chapel or meeting-house, praying the Court of Chancery to sanction and establish *their* possession, to appoint new trustees, and to grant an injunction to stay proceedings in an action at law of ejectment commenced by the defendants, who claimed to be trustees of the chapel or meeting-house.

The plaintiffs contended that the true construction of the deed was the promotion of the doctrine and worship of the Holy Trinity, and that the chapel or meeting-house and property could not be used or applied for any other purpose; the defendants insisted that the interpretation was not so limited, as "the worship and service of God" stated in the foundation deed was general, and specified no particular religious tenets. Lord Chancellor Eldon granted an injunction restraining all further proceedings by the defendants in the ejectment, and referred it to the Master of the Court to inquire what was the nature and particular object respecting worship and doctrine, for the observance, teaching, and support of

which the charitable estates and funds had been raised; distinguishing *when* and by *whom* they were created. His lordship, in reference to the religious doctrine contemplated by the founder, said that without entering into what might be the effect of the statute 53 Geo. III. c. 160, s. 2, which removed every disqualification and penalty theretofore existing upon anti-Trinitarians, or those persons who denied the Holy Trinity, or considering whether it is since the passing of the said Act legal to impugn the doctrine of the Trinity; the inquiry was whether the deed creating the trust did or did not upon the face of it, regard being had to that which the Toleration Act (1 Will. & Mary, c. 18, which excepted Papists and Popish recusants, and every person who in his preaching or writing should deny the doctrine of the Blessed Trinity, from the relief thereby granted), at the time of the execution of the deed permitted or forbade, bear a decided manifestation that the doctrines contemplated by that deed to be preached in the chapel or meeting-house were Trinitarian. Because, if that were the case originally, and if any number of the trustees were seeking to fasten on the institution the promulgation of doctrines contrary to those which were intended by the founders, they would be seeking to do what was not in their power, even with the sanction of every member of the congregation. In that view also, supposing that even at the time of the establishment of the institution it was legal to impugn the doctrine of the Trinity, yet if its object was the inculcation of that doctrine, it could not be diverted to the promulgation of anti-Trinitarianism.

His lordship further observed:—

"It is impossible to doubt that the trust was originally created for the purpose of maintaining a Protestant dissenting institution, and it

would be doing violence to the intention of the parties to the deed in question to say that the worship and service of God being the objects they expressed, the trust must be administered in such a way as to maintain the religion of the Established Church. Nevertheless, I take it from the experience of many years in the Court of Chancery, that if any body of persons mean to create a trust of land or money in such a manner as to render the gift effectual, and to call upon the court to administer it according to the intent of the foundation, whether that trust has religion for its object or not, it is incumbent on them, in the instrument by which they endeavour to create that trust, to let the court know enough of the nature of the trust to enable the court to execute it, and therefore where a body of Protestant Dissenters have established a trust without any precise definition of the object or mode of worship, I know no means the court has of ascertaining it, except by looking at what has passed, and thereby collecting what may by fair inference be presumed to have been the intention of the founders. From this deed I can collect that the founders were Protestant Dissenters, and thence presume that their object was the maintenance of Protestant Dissenting worship, but I have nothing to inform me what species of doctrine this institution was intended to maintain, except as I may be able to infer from some of the clauses of the deed, and particularly from that clause which alludes to the possibility of the future prohibition by law of the worship thereby intended to be established, and also from that which relates to the binding effect of orders to be made by a majority of the trustees upon matters relating to the meeting-house only, from which it would appear both that the founders meant to establish an institution which was not then contrary to law, and that they did not mean to invest in the trustees or the major part of them any right to vary the system or plan of doctrinal teaching which was to be maintained in the chapel or meeting-house, according to their own discretion. Looking at the date of the deed, 1701, and to the dates of the Toleration Act and of the Relieving Act for anti-Trinitarians already referred to, and also to the deed of 1720, which provided for the future possible prohibition by law of the worship intended, Lord Eldon thought it impossible to say that while the founders contemplated the eventual abrogation of the existing system of toleration, they were in fact intending to create by that very deed a system which was at that time illegal, and which only three years before that hearing was exempted from disqualification and punishment. That, clause, therefore seemed to afford extremely strong countenance to the assumption that the institution was not intended for the maintenance of opinions which impugn the doctrine of the Holy Trinity. It would be doing violence to the

rules of construction to hold that the clause giving the trustees power to make orders as to the meeting-house authorized them to convert it into a place for worship of a different kind, and for teaching doctrines different from those entertained by the founders, and by whom it was attended. This appeared to Lord Eldon to be as inconsistent with the probable meaning of the original founders as it would be to hold that they meant it should be converted at the discretion of the trustees into a place of worship conducted according to the system and doctrines of the Church of England."

At the hearing of Attorney-General *v.* Pearson, Sir Lancelot Shadwell, Vice-Chancellor of England, delivered the following judgment:—

"It certainly appears to me, and I cannot divest my mind of the notion, that though the period at which the trust of this chapel was made must be regarded, the thing to be considered when a fund was given for the benefit of a certain class of persons to promote the service and worship of Almighty God was what were the religious tenets and form of doctrine professed by such persons, for I cannot bring myself to think that it was a just application of the trust fund of individuals, if it were allowed in the main to be employed for the assistance of religious persons and for the promotion of religious opinions which they themselves altogether disavowed. I certainly do not think that the only thing to be regarded is the state of the law at the period the trust was created, but still it must be regarded in some degree, because the state of the law might assist in determining what were the opinions of the persons who created the trust, and if I find that at *that* time the preaching and promulgation of certain doctrinal opinions were not permitted by law, it may be reasonably inferred that the person who created the trust for the worship and service of Almighty God, meant to create such a trust as would not include the promulgation of opinions which it was illegal to propagate at *that* period. That is the way in which it strikes me. I have heard and read a great deal about the extreme anxiety which is manifested by the three principal denominations of Dissenters—Presbyterian, Independent, and Baptist—to have their religious opinions unfettered by what is termed creeds, but I cannot help thinking that it is of much importance in their own minds that certain religious opinions should be inculcated among their hearers, though they are at liberty sometimes to preach just what they please, and that the supporting and inculcating certain things assumed by them to be religious truths, might have

been deemed of more importance than the mode by which they were disseminated. They mean, no doubt, there should be that sort of opinion taught which they themselves entertained, and the result has shown how very much that object had been attained with respect to the Presbyterians. A great change of opinion had undoubtedly taken place: they had swerved from the opinion of their forefathers, and had now become the advocates of widely different doctrines. Looking at what were undeniably the opinions entertained by the Presbyterians at the period when the charity was founded, it might safely be inferred that the founder never could have meant that doctrines denying the Holy Trinity should be taught in this chapel as part of the service and worship of God."

The court ordered that the meeting-house and other property in the pleadings mentioned ought not to be applied to the support or teaching of the doctrines of any sect of Protestant Dissenters who deny the doctrine of the Holy Trinity, or profess opinions as to the Christian religion which at the time of the erection of the said meeting-house could not be legally taught or preached therein, that the two defendants be removed from being trustees of the said meeting-house and the other trust property, and that they execute all proper deeds and conveyances thereof to new trustees to be appointed under the direction of the court.

The defendants appealed against the decree of the Vice-Chancellor of England. The appeal was heard (after able and elaborate argument) by Lord Cottenham, then Chancellor, in Hilary Term, A.D. 1836. The Lord Chancellor postponed his judgment on the appeal till after the hearing and decree in the then pending suit of the Attorney-General *v.* Shore and others (*post*), involving the legal construction of the trusts for Lady Hewley's religious charities, whereupon the hereinbefore recited decree of the Vice-Chancellor of England was confirmed.

The principles of construction established by the

several judgments in Attorney-General *v.* Pearson were adopted in the Attorney-General *v.* Shore and others, which involved the interpretation of the trusts of Lady Hewley's religious charities. By indentures of lease and release, bearing date 12th and 13th days of January, A.D. 1704, the Lady Hewley conveyed real estates in fee simple upon trust, as well to pay the rents yearly or otherwise, to such and so many poor and godly preachers for the time being of Christ's holy Gospel, and to such poor and godly widows for the time being of poor and godly preachers of Christ's holy Gospel, at such time or times, and for so long time or times, and according to such distributions as the trustees and managers for the time being, or any four or more of them, should think fit, and employ and dispose of such sums of money, and in such manner, for the encouragement and promotion of the preaching of Christ's holy Gospel in such poor places as the said trustees or managers for the time being should think fit, and also employ and dispose of such sums of money, yearly or otherwise, as and for exhibitions, for such or so long time or times, for or towards the education of such young men designed for the ministry of Christ's holy Gospel, never exceeding five such young men at one and the same time, as the said trustees or managers for the time being, or any four or more of them, should approve and think fit; and as to all the remainder of the residuary rents and profits of the premises, that the trustees and the survivors of them should employ and dispose of the same in and for the relieving of such godly persons in distress, being fit objects of the charity, as the said trustees and managers for the time being, or any four or more of them, should think fit.

In A.D. 1707 the Lady Hewley conveyed a newly erected almshouse in the City of York and other real property to

trustees, and directed the annual sum of £60 to be raised out of the rents of the latter property for the maintence of the people in the almshouse. The trustees were directed to place ten poor persons in the almshouse, whereof nine were to be always poor widows or unmarried women, so long as they should continue so, being of the age of 55 years or upwards, and the tenth person to be a pious and sober man, who might be fit to pray twice a day, that is to say, once every morning and evening, with the rest of the inmates of the almshouse, and in default of this the tenth person to be a poor woman, qualified as the others; the trustees were directed to observe the rules and orders contained in a book signed by Lady Hewley. The ulterior trusts in the last-mentioned deed, as to the remainder of the rents of the estate comprised in it, were similar to those of the first-mentioned deed respecting the property comprised therein. The rules and orders referred to provided that none but poor and piously disposed persons, and such as were of the Protestant religion, and of moral habits, should be admitted into the almshouse, and, *inter alia*, "Let every almsbody be one that can repeat by heart the Lord's Prayer, the Creed and Ten Commandments, and Mr. Edward Bowles' Catechism. Let all the almspeople, when not disabled by weakness, duly repair to some religious assembly of the Protestant religion every Lord's Day, forenoon and afternoon, and at opportunities to attend the ordinances of God."

An information was filed having for its object the construction to be placed on the trusts declared and contained in the two deeds. The principal contention was whether the trusts comprised Unitarians, or were confined to Protestant Dissenters believing in the Holy Trinity. The information prayed that the defendants, trustees of

the charity, being professed Unitarians, should be removed, and new trustees, being Trinitarians, should be appointed in their stead, and that an annual sum which had been paid out of the rents of the estate to the officiating minister, a Unitarian, should thenceforth be disallowed.

The trusts had for fifty years preceding the suit been duly performed, if they comprised Unitarians, who had been receiving part of the revenue. Widows of professed Unitarians also received stipends, and Unitarian students obtained exhibitions out of the fund. The plaintiffs contended that as Lady Hewley attended a place of worship in which the doctrine of the Holy Trinity was preached as a fundamental principle of the Christian religion, and referred in the first deed to a catechism inculcating the same doctrine, and as the propagation of Unitarian or anti-Trinitarian principles was illegal and had been subject to disqualifications and penalties shortly before the creation of this religious charity by the statute 9 & 10 Will. III. c. 32, it could not be holden that her ladyship contemplated the maintenance of preachers and recipients who professed such illegal doctrines, and that the trusts extended to Trinitarians only who alone then enjoyed legal toleration of their opinions and protection of their worship; the defendants, *contra*, urged that the trusts designated preachers and recipients of no particular denomination of Protestant Dissenters, that before the suit all disqualifications and penalties on persons who denied the Holy Trinity were by statute (53 Geo. III. c. 160) removed, that the defendants preached or professed the holy Gospel of Christ, and by virtue of the statute 19 Geo. III. c. 44, were entitled to the full toleration and privileges of the Unitarians, if (which they did or were prepared to do)

they would make the declaration required by the last-mentioned Act, that they were Christians and Protestants, and as such that they believed the Scriptures of the Old and New Testament, as commonly received among Protestant churches, contained the revealed will of God, and that they received the same as the rule of their doctrine and practice.

The Vice-Chancellor of England, Sir Lancelot Shadwell, delivered the judgment, after the hearing, to the effect that no person who denied the Divinity of the person of Jesus Christ our Holy Saviour, and the doctrine of original sin as understood among Christians, was entitled to share in Lady Hewley's charity, and that every one of the trustees who entertained those tenets should be removed, and further, that although there was no doctrinal objection to a member of the Church of England being trustee, it was decided that he also be removed. The terms of the decree were "that ministers or preachers of what is commonly called Unitarian belief and doctrine, and their widows and members of their congregations, and that persons of what is commonly called Unitarian belief and doctrine, are not fit objects of and are not entitled to partake of the charities of Dame Lady Hewley in the cause mentioned, and the relators having offered to allow defendant J. P. H., a member of the Church of England, to remain trustee of the charity, but he not having accepted the offer, the court decreed that he and all the other defendants, professed Unitarians, be removed from being trustees and managers of the charities."

Appeal having been made against the Vice-Chancellor's judgment by the defendants, the cause was fully argued before the Lord Chancellor Lyndhurst, assisted by Mr. Justice Pattison and Mr. Baron Alderson, in April, 1835.

The last-named, in delivering the opinion of the two Judges, observed:—

"It is clear from all the documents furnished that the persons to be benefited by the charity are to be Dissenting ministers, and not ministers or members of the Established Church of England. The question is, who are the Dissenters, according to the intent and meaning of Lady Hewley, as expressed in the trust deeds? In the trust for poor widows, who from calamity or otherwise might be reduced to indigence, Lady Hewley expressly states she expected the recipients of her charity should believe certain doctrines: what are those doctrines? They must be those which Lady Hewley herself entertained. She had given most particular direction in the case of poor pious widows who were to be inmates of her almshouses, that they must, before admission, be able to repeat the Lord's Prayer, the Creed, the Commandments, and Mr. Bowles' Catechism, and that they must regularly attend some place for Divine worship. The question was, who answered that description? Although it is clear the charity was confined to Protestant Dissenters, it is also clear it is not restricted to one class, because they were only required to attend 'some Protestant place of worship.' It is clear the charity extended to persons who differed in religious opinion on some points, yet they were required to agree on all fundamental points."

From the direction given by Lady Hewley respecting the almshouses, his lordship said:—

"I think it clear that those elementary points comprised the doctrines formed in the Lord's Prayer, the Creed, Ten Commandments and Mr. Bowles' Catechism. It was argued that those doctrines should be learned only, without being also professed; but I think they should should be accepted as a rule of faith. Then, what are those elementary doctrines? All agreed that they comprised the Lord's Prayer and Ten Commandments. Perhaps the Apostles' Creed, although received by Christians, may be taken as an instance of the difference of opinion to which I have alluded. It is not, I believe, adopted by the sect who disbelieve the Divinity of Jesus Christ—it may, therefore, be taken as a test of the intentions of Lady Hewley. In the Creed the expressions used were 'God the Father, God the Son, the Redeemer of Mankind, and God the Holy Ghost, who proceeded from the Father and from the Son.' Thus, the belief in the Trinity was clearly acknowledged. That would be then considered essential points of belief. The Presbyterians, during the life of Lady Hewley, did not think it desirable to be bound by tests and creeds, but to

rely on the words of Scripture. Accordingly, Mr. Richard Baxter when a union of the Established Church and Presbyterians was proposed, recommended that the only test required should be a belief in the Lord's Prayer and Ten Commandments. It was then objected that that test would admit Papists and Socinians, to which Mr. Baxter observed, he did not think there was sufficient ground in the objection, that it was not desirable admission should be confined to a certain rule of faith, but if improper persons should be admitted, they might be called to account for their preaching or writing. But to return to the tests in Lady Hewley's trust deed respecting the persons to be admitted into the almshouses, the view I have expressed with reference to the Apostles' Creed seems to have been taken up and adopted in the latter articles of Mr. Bowles' Catechism. All theologians to whom this Catechism was referred, stated it is essentially Trinitarian, and could be believed by those persons only who acknowledged the Divinity of our Saviour Jesus Christ, and the doctrine of original sin. Nothing has been shown by the appellants to alter the evidence on this point. This is the deliberate opinion of my learned brother, Mr. Justice Pattison, from a fair reading of the Catechism. We therefore think, upon the whole, that Lady Hewley intended those persons alone should be admitted into her almshouses who believed and professed the doctrines contained in the Creed and Catechism, and who adopted them as a rule of their faith. Now, this proviso applied to the persons mentioned in the fourth class of the trust deed of 1704. The question is, did Lady Hewley not mean that the other class as well as this should be composed of a particular description of Christians? The defendants trustees cannot come within the class of Protestant dissenting Christians who are to be received into the almshouses. The expression used by Lady Hewley with regard to the preachers—poor and godly—was explained by the sense in which it was used in the other passage. It appears to us that many circumstances tend to show that the doctrines enjoined in the case I have just mentioned were those entertained by herself, and that her ladyship was anxious for their adoption and dissemination. It is not likely Lady Hewley, who was manifestly so anxious for the promotion of religion, should wish the promotion of opinions different from and, in some respects, antagonistic to those entertained by herself. Under these circumstances, there can be no reasonable doubt that the words, 'poor and godly preachers of Christ's Holy Gospel,' and the provisions for the education of persons to preach the Gospel meant those persons only who professed the same religious doctrines as herself. We consider this opinion is confirmed by the peculiar language of Lady Hewley's will, the state of the law and of public opinion in her time, and by recollecting that the doctrine she

enjoined on the inmates of her almshouses were those then professed by the general body of Protestant Dissenters. The defendants have failed to show Lady Hewley's intention extends to their own sect of anti-Trinitarians, whose tenets are inconsistent with her own strongly fixed religious opinions. Upon the whole, my learned brother and I are of opinion the judgment of the Vice-Chancellor of England should be affirmed."

The Lord Chancellor Lyndhurst concurred in the opinion of the learned judges, delivered by Mr. Baron Alderson, and said:—

"In all charities I think there can be no doubt it is the duty of the court to give effect to the intention of the donor, provided it can be done without violating any rule of law. This has been the uniform practice and the principle on which the Court of Chancery has always acted. When the terms of the trust deed are clear and precise, the course of the parties is free from all difficulties; if, on the other hand, terms obscure, doubtful or equivocal in themselves or their application are used, then resort must be had to external circumstances to ascertain the intentions of the donor, in order to carry them into effect. Each case of this description involves a question of evidence and of fact, which must vary in the particular case. The judgments in the Attorney-General *v.* Pearson, 3 Mer. 409, were given by learned judges of the greatest experience in Courts of Equity, and the principles established by those decisions are clear and precise, and must govern similar cases in future. In the present case, the first is what are the directions in the trust deeds. It is admitted on both sides that the bequest does not include ministers of the Established Church of England. They are not comprised in the gift, however godly and pious they may be. The terms godly and pious, therefore, must be taken with some restriction. Then, what is the limitation? The first question is, what were the particular religious opinions of Lady Hewley, the founder of this charity? There can be no doubt she was a Presbyterian. It was historical she was a member of the Presbyterian denomination. It is admitted in the answers of two of the defendants, and it is shown by the evidence that Lady Hewley attended a chapel where acknowledged Presbyterian ministers officiated. Her adviser and executor was a Presbyterian. The question arises, what were then the doctrines of that body of Protestant Dissenters? From all the evidence adduced, the Presbyterians at that time only objected to those articles of the Church of England which had reference to its forms and discipline. It does not appear there was

then any essential difference on doctrinal points between the members of the Establishment and the Presbyterians. The Presbyterians at that time were believers in the doctrines of original sin and of the Holy Trinity. In the articles of agreement between the Presbyterians and Independents, in 1691, it was expressly stated that each denomination believed certain doctrines specified in the Articles of the Church of England *inter alia*, original sin and the Trinity. I think these articles of agreement are conclusive what were then the opinions of the Presbyterians. There is no doubt they were firm believers in the Holy Trinity. I would refer to the Toleration Act in further proof of this, if necessary. It is well known that many members of the Presbyterian body of Christians were consulted in preparing that Act, and that they were satisfied with its provisions. By the 17th section of that statute, all persons who denied the doctrines of the Holy Trinity were excepted from its protection. The whole of the evidence shows that the great body of the Presbyterians at that date—about the close of the seventeenth century—as well as the Independents, believed in the Trinity and original sin, as laid down in the Articles of the Established Church of England. The question is, was Lady Hewley an exception?—*i.e.*, is it to be assumed she did not believe the doctrines of original sin and the Holy Trinity? It is certain she was a Presbyterian when she created this charity, and that the doctrine last mentioned formed part of the fundamental creed of that denomination of Christians. It, therefore, was incumbent on the defendants to show that Lady Hewley was an exception to the general body of which she was member. But what are the probabilities of the case? There can be little doubt that the doctrines of the Unitarians were then listened to with feelings of aversion. Lady Hewley was then advanced in life, and was previously well known to have been a Trinitarian. Is it, therefore, probable she had changed her opinions? There is another circumstance connected with the situation and character of Lady Hewley. She had attracted great attention and was well known for her piety, and it must have become a well known matter of history if she had adopted Unitarian opinions. But it is not sufficient to allow the question to be decided on probabilities. It is the opinion of witnesses of the greatest intelligence and highest theological standing that Lady Hewley was a believer in the Holy Trinity. One of the defendants stated his belief that very many Presbyterians were Trinitarians, and admitted that, from the chapel she attended, she could not have been what was called a Unitarian, and it is not probable that the minister of that chapel, who was a man of character, would have subscribed the declaration of his belief in, *inter alia*, the Trinity enjoined by the Toleration Act, if he

were Unitarian. That Minister preached the funeral sermon of Lady Hewley, in which there was strong evidence she was a Trinitarian. All these circumstances lead me to the conclusion that Lady Hewley did not entertain Unitarian opinions. Then there is the evidence furnished by Mr. Bowles' Catechism. The doctrine of original sin was laid down in that Catechism in the most precise terms. I agree with the learned judge, Baron Alderson, in thinking that Lady Hewley would not require a qualification for admission into the almshouses which she did not think necessary with respect to the recipients of her other charity. I have gone through all the evidence with the utmost attention, and it has abundantly satisfied me that Lady Hewley was a Presbyterian and believed in the Holy Trinity. We now come to the question what is meant by 'poor and godly preachers of Christ's Holy Gospel.' Is it possible to come to the conclusion by any rules of reason that Lady Hewley intended to found a chapel and assist and educate preachers of doctrines directly at variance with her own? These differences were not on trifling matters, but on points which had ever been reputed by all Christians, and especially by herself, as of the utmost importance. But this is not merely her own language, it is also that of the minister of the chapel she attended. He once stated in one of his sermons that the doctrines of the Trinity and original sin could not be regarded as non-essential points, and that he did not know any denomination of Christians, except the Unitarians, who did not regard them essential. Is it to be supposed that the pious lady would bestow large funds to promote the preaching of doctrines contrary to those she believed to be of essential importance? I must have strong facts, or hear some strong arguments before I should be justified in arriving at such a conclusion. On the question of fact, I believe it extremely improbable—indeed, impossible—Lady Hewley could have done so. I have simply to advert to the statute 9 & 10 Will. III. c. 32, against blasphemy, passed six years before the first of the deeds of trust executed by Lady Hewley founding the charity, to show that the persons who impugned the Trinity were then considered blasphemers and guilty of an odious offence. If the persons who preached or performed such doctrines were subjects to legal punishment, it followed that it was illegal to give money for such purpose—the rule is, that when a deed is capable of two constructions, that will be adopted which is consistent with the law of the land, and not that which is contrary to it. When, therefore, we can put a construction on the deed consistently with the laws, we cannot presume the intention was to promote doctrines directly against the law. It would be contrary to every principle of construction to do so. It has been argued that the last-mentioned Act

has been repealed, and that should make an alteration in the construction of the deed. I do not think the case is altered in the slightest degree by a change in the law—the simple question is, what doctrines did Lady Hewley, at the time she made the gift, intend to promote? In my opinion there is no difference because the law was altered a century afterwards. On these two grounds, that this pious lady did not intend that her charity should be devoted to the promotion of doctrines entirely at variance with her own, or to make a gift which is illegal, I think Lady Hewley did not mean her charities should extend to Unitarians. It was alleged that her ladyship entertained generous and liberal opinions, but all on this point is wide and general. I believe Lady Hewley was, as to her religious belief, a Trinitarian, and that she never could have intended her bounty to promote doctrines entirely contrary to her own. I, therefore, concur with my learned friends in the conclusion at which they arrived, and affirm the learned judgment of the Vice-Chancellor of England.

"The next question is, who administered the proceeds of the funds constituting these charities, and how? Both trustees and the sub-managers were Unitarians. This was not disputed, and it is clear they were believers of Unitarian doctrines. There is one exception, that trustee being a member of the Church of England. How did the trustees administer the funds, and in what manner perform that important duty? The misapplication of the funds for a long period would be cause sufficient for removing the trustees, but it is alleged they acted from erroneous judgment. That may have been, but looking at the evidence in the suit I am compelled to come to the conclusion that there has been a strong and undue leaning in the expenditure of the funds upon persons professing Unitarian opinions. The vacancies in the trusteeship were from time to time filled by persons of that sect, and the control of the charity was in the hands of Unitarians. There was another circumstance: almost all the students for future preachers educated by their charity have been sent to Manchester College, York—substantially a Unitarian Institution. The question, therefore, is not whether the defendants have misapplied the charity for particular purposes, but whether they have not shown throughout a strong bias and partiality for opinions and doctrines entirely at variance with those of the founder. Looking, therefore, at what has been done and what may take place hereafter, I have come to the conclusion that it would be dangerous to leave the management of the funds of this charity with the defendants. I, therefore, think the Vice-Chancellor was correct in ordering the removal of the defendants from the office of trustee, and I affirm his judgment on the hearing."

The judgments delivered in The Attorney-General *v.* Pearson and The Attorney-General *v.* Shore and others (*supra*), and the circumstances of the cases, occasioned warm and extensive discussion and agitation in the religious community. After several years of acrimonious debate, a Bill was, in A.D. 1844, introduced by Lord Lyndhurst into the House of Lords, with the sanction of Sir Robert Peel and his then Ministry, for the regulation of suits relating to meeting-houses and other property held for religious purposes by persons dissenting from the United Church of England and Ireland, which became law on the 19th July, 1844.[1] The provisions of this important statute are as follows:—

"An Act for the Regulation of Suits relating to Meeting-houses and other Property held for Religious purposes by persons dissenting from the United Church of England and Ireland," 7 & 8 Vic. c. 45.

Whereas an Act was passed in the first session of the first year of the reign of King William and Queen Mary, intituled "An Act for exempting their Majesties' Protestant subjects dissenting from the Church of England from the penalties of certain laws." And whereas an Act was passed in the nineteenth year of the reign of King George III. intituled "An Act for the further relief of Protestant Dissenting ministers and schoolmasters." And whereas an Act was passed in the fifty-third year of the reign of King George III., intitled "An Act to relieve persons who impugn the doctrine of the Holy Trinity from certain penalties." And whereas an Act was passed by the Parliament of Ireland in the sixth year of the reign of His Majesty King George I., intituled "An Act for exempting the Protestant Dissenters of this kingdom from certain penalties to which they are now subject." And whereas an Act was passed in the fifty-seventh year of the reign of King George III., intituled "An Act to relieve persons impugning the doctrine of the Holy Trinity from certain penalties in Ireland." And whereas, prior to the passing of the said recited Acts respectively, as well as subsequently thereto, certain meeting-houses for the worship of God, and Sunday or day schools (not being grammar schools), and other charitable foundations, were founded or used in England and Wales

and Ireland respectively for purposes beneficial to persons dissenting from the Church of England and the Church of Ireland, and the United Church of England and Ireland respectively, which were unlawful prior to the passing of those Acts respectively, but which by those Acts respectively were made no longer unlawful. Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, that with respect to the meeting-houses, schools, and other charitable foundations so founded or used as aforesaid, and the persons holding or enjoying the benefit thereof respectively, such Acts and all deeds or documents relating to such charitable foundations, shall be construed as if the said Acts had been in force respectively at the respective times of founding or using such meeting-house, schools, and other charitable foundations as aforesaid.

II. And be it enacted, that so far as no particular religious doctrines or opinions, or mode of regulating worship, shall on the face of the will, deed, or other instrument declaring the trusts of any meeting-house for the worship of God by persons dissenting as aforesaid, either in express terms or by reference to some book or other document as containing such doctrines or opinions or mode of regulating worship, be required to be taught or observed, or be forbidden to be taught or observed therein, the usage for 25 years immediately preceding any suit relating to such meeting-house of the congregation frequenting the same shall be taken as conclusive evidence that such religious doctrines or opinions or mode of worship as have for such period been taught or observed in such meeting-house may properly be taught or observed in such meeting-house, and the right or title of the congregation to hold such meeting-house, together with any burial-ground, Sunday, or day school, or minister's house attached thereto, and any fund for the benefit of such congregation or of the minister, or other officer of such congregation, or of the widow of any such minister, shall not be called in question on account of the doctrines or opinions or mode of worship so taught or observed in such meeting-house. Provided, nevertheless, that where any such minister's house, school, or fund as aforesaid shall be given or created by any will, deed, or other instrument, which shall declare in express terms, or by such reference as aforesaid, the particular religious doctrines or opinions for the promotion of which such minister's house, school, or fund is intended, then and in every such case such minister's house, school, or fund shall be applied to the promoting of the doctrines or opinions so specified, any usage of the congregation to the contrary notwithstanding.

III. Provided always, and be it enacted, that nothing herein contained shall affect any judgment, order or decree already pronounced by any court of law or equity, but that in any suit which shall be a suit by information only, and not by bill, and wherein no decree shall have been pronounced, and which may be pending at the time of the passing of this Act, it shall be lawful for any defendant or defendants for whom the provisions of this Act would have afforded a valid defence if such suit had been commenced after the passing of this Act, to apply to the court wherein such suit shall be pending, and such court is hereby authorized and required, upon being satisfied by affidavit or otherwise, that such suit is so within the operation of this Act, to make such order therein as shall give such defendant or defendants the benefit of this Act, and in all cases in which any suit now pending shall be stayed or dismissed in consequence of this Act, the costs thereof shall be paid by the defendants or out of the property in question therein, in such manner as the court shall direct.

So great a proportion of the land of the country (the one half according to Mr. Hallam's History of the Period, p. 411), during what are called the Middle Ages, was being granted and given by the proprietors, in most instances under the undue influence of Popish priests, for religious and charitable uses and purposes, and thereby abstracting it from private ownership and enjoyment and from mercantile enterprise, consequently from free and profitable employment, that the Legislature felt it incumbent from time to time, as the evil grew in magnitude, to pass measures of restraint upon such dispositions. The first of these enactments was contained in the statute of Magna Charta, 9 Hen. III. c. 36: "That it shall not be lawful from henceforth to any to give his land to any religious house, and to take the same land again to hold of the same house. Nor shall it be lawful to any house of religion to take the lands of any and to lease the same to him of whom he received it. If any from henceforth give his land to any religious house and thereupon be convict, the gift shall be utterly void and the land shall accrue to the lord of the fee."

The Popish and other clergy, who were then the most learned men of the land, invented methods of evading this statute by purchasing lands holden of themselves, by taking leases for long terms of years and other contrivances. To prevent these, the statute *De viris religiosis*, 7 Edw. I. c. 2, was passed: "That no religious or other person, whosoever he be, that will buy or sell any lands or tenements, or under the colour of gift or lease, or that will receive by reason of any other title, whatsoever it be, lands or tenements, or by any other craft or engine will presume to appropriate to himself under pain of forfeiture of the same whereby such lands or tenements may anywise come into mortmain. Also that if any person, religious or other, do presume, either by craft or engine, to offend against this statute, it shall be lawful for us and other chief lords of the fee immediate to enter into the land so aliened within a year from the time of the alienation, and to hold it in fee as an inheritance. And if the chief lord immediate be negligent, and will not enter into such fee within the year, then it shall be lawful to the next chief lord immediate of the same fee to enter into the same land within half a year next following, and to hold it as before is said, and so every lord immediate may enter into such land if the next lord be negligent in entering into the same fee as is aforesaid. And if all the chief lords of such fees, being of full age within the four seas and out of prison, be negligent or slack in this behalf for one whole year, we immediately after the year accomplished from the time such purchases, gifts, or appropriations happen to be made, shall take such lands and tenements into our own hands, and shall enfeoff other therein by certain services to be done to us for the defence of our realm, leaving to the chief lords of the

same fees their wards and escheats, and other services thereunto due and accustomed."

Notwithstanding this statute, grants to corporations without any licence in mortmain are good for the purpose of vesting the land in the grantees, because corporations without such licence have capacity to take but not to retain such grant. The Act includes gifts of land to a corporation as well as purchases—Fitzherbert *Natura Brevium* 244, F. 9 Mod. 202, 177. Notwithstanding a citizen and freeman of London may by custom devise lands in mortmain—Bridg. 103, Bro. customs 41, Roll. Abridgment 556, 8 Rep. 129, but it is confined to lands in London (Middleton *v.* Cator, 4 Bro. C.C. 409). The taking of a lease for a very long term, as 200 or 100 years, is prohibited by the preceding Acts, but a lease for 20 or 50 years does not appear to have been so (Bro. Mortmain pl. 27, 39, Viner's Abridgment, Mortmain, B. pl. 21, Reports of Sir Orlando Bridgman 7). The lord must enter on the land for forfeiture in mortmain within a year of the gift or grant (Plowden, 202), which was to be computed from the day next after the alienation (Viner's Abridgment, Mortmain, c. 3, pl. 5). If a remainderman alienated in mortmain the lord cannot enter for the forfeiture till the determination of the life or other preceding estate (Viner's Abridgment, Mortmain, B. pl. 19). The heir of a tenant in tail who had aliened in mortmain was not barred by the foregoing statutes, because the Act 13 Edw. I. c. 1 (*de donis*) was passed subsequently (Bro. Mortmain, pl. 10, Viner's Abridgment, Mortmain, C. pl. 2, Plowden 238). The King or Queen cannot enter upon lands forfeited in mortmain till after office or inquisition thereof found (Doe *d.* Hayne *v.* Redfern, 12 East 96, Doe *d.* Evans *v.* Evans, 5 Barnewell & Cresswell, 587). Such inquiry of

lands alienated in mortmain is had by commission under the Great Seal to commissioners, generally five, who summon a jury, and examine witnesses to ascertain the fact, whereupon the inquisition is returned into the Court of Chancery (*In re* University Life Assurance Society, January 6th, 1834). Every subject has a right to traverse the inquisition (*Ex parte* Lord Gwydir, 4, Maddox, 322, leave for which is obtainable by petition to the Court of Chancery (*ex parte* Webster, 6 Vesey, 609).

The legal learning and acumen of the ecclesiastics contrived another evasion of the statute *de donis*, whereby the religious houses set up a fictitious title to the lands to be acquired, and brought an action of ejectment against the tenant in possession to recover them, and the latter by collusion making no defence, judgment was thereupon given for the religious house, which thereby acquired the land by sentence of a court of law upon a presumed previous paramount title. Although these proceedings were a conventional fraud between the religious house and the owner of the land and tenant in possession, the judges held the recovery of the land thereby acquired was conclusive, as it must be presumed the record of the judgment was regular and just (2 Institutes 429, Plowden 43). This contrivance was the foundation of common recoveries, well known and used for centuries as the principal assurance or means resorted to by tenants in tail to bar the entail in the lands and to acquire the fee simple thereof.

To remedy this further device of the ecclesiastics the statute 13 Edw. I. c. 32, was passed, which, after reciting that when religious men and other ecclesiastical persons did implead any, and the party impleaded made default whereby he ought to lose the land, forasmuch as the

justices had thought hitherto that if the party impleaded made default by collusion that when the demandant by occasion of the statute could not obtain seisin of the land by title of gift or other alienation, he should then by reason of the default, and so the statute was defrauded, enacted: "That in this case after the default made, it shall be inquired by the country whether the demandant had right in the thing demanded or not; if it was found that he had right, judgment should pass for him and he should recover seisin, and if he had no right, the land should accrue to the next lord of the fee if he demanded it within a year from the time of the inquest taken, and if he did not demand it within the year it should accrue to the next lord above if he demanded it within half year after the same year, and so every lord after the next lord should have the space of half year to demand it successively until it came to the King, to whom at length, through default of other lords, the lands should accrue. And to challenge the jurors of the inquest, even of the chief lords of the fees should be admitted, and likewise the King, and that after judgment given the land should remain clear in the King's hands until it was deraigned by the demandant or some other chief lord, and the sheriff should be charged to answer for it at the Exchequer.

Pursuant to the last-mentioned Act, a judicial writ called *quale jus* was framed where an abbot, prior, or such other religious person sought to have judgment to recover land by the default of the tenant, against whom the land was demanded when before judgment was given or execution had the last-mentioned writ was directed to the escheator, to inquire what right the party had to recover, and if he found he had no right, then the lord might enter as for an alienation in mortmain.

After stating the recovery and the suspicion of fraud, the writ commanded the sheriff to summon a jury to inquire what right the religious person had in the land recovered, who of his predecessors had been seised of it in right of the Church, and the annual value thereof; the writ commanded the sheriff in the meantime to seise the land in question into the King's hands, and to answer for the proceeds thereof to the Exchequer, and further to give notice to the chief lords mediate and immediate of the fee, to attend, if they thought proper, at the inquest to be taken (Reg. Judic. 16, 17; 2 Inst. 429; Gibs. Cod. 667).

In the early part of the twelfth century those redoubtable orders of chivalry—the Knights Templars and Knights Hospitallers—were established, who by their daring prowess and brilliant achievements acquired commanding influence and extensive possessions in England and throughout Christian Europe. The knights of both orders enjoyed great privileges as against the Crown and feudal Barons. Their lands were free of tithes, and they were not subject to the jurisdiction of the Ecclesiastical Courts, but amenable only to a Court of Conservators of their own order, and they could give sanctuary to felons (Gibs. Cod. 668). Their banners bore the sign of the cross, which the tenants of their lands erected on their dwellings, in assertion of their privileges. Other tenants, not so entitled, falsely displayed a similar ensign on their lands, to claim like protection. To prevent, or remedy the same, 13 Edw. I. c. 33, reciting such practices as last stated, enacted that such tenants setting up, or causing to be set up, crosses on their lands in prejudice of their feudal superior, should forfeit such land to the chief lord, or to the Crown, in like manner as lands delivered in mortmain,

Inferior lords were in the habit of granting their lands to other persons, to be holden of the grantors as mesne lords. This practice of subinfeudation occasioned much loss to the chief lords. For remedy thereof, 9 Hen. III. c. 32, provided that no man should give or sell his land without reserving sufficient to answer the demand of his superior lord. The statute *quia emptores*, 18 Edw. I. c. 1, provided even more effectual protection to the superior liege against the practice of subinfeudation, by enacting that from thenceforth it should be lawful to every free man to sell, at his own pleasure, his lands or tenements, so that the grantee should hold the same of the chief lord of the fee by the like services and customs as they were previously subject to, and that by such sales or purchases such lands or tenements should in no wise come into mortmain in part or whole. A practice was then adopted for religious persons, parsons, vicars, and other spiritual persons, to enter upon lands adjoining their churchyards with the connivance of the tenants in possession, and to convert them into churchyards and cemeteries by licence from the Pope, without the permission of the feudal superior lord or the King, whereby they acquired extensive possessions in mortmain. For remedy thereof, 15 Richard II. c. 5, declared such practices to be within and prohibited by the statute *de religiosis*, 7 Edw. I. c. 2.

The next device of the ecclesiastics to elude the statute of mortmain, and which was the origin of the subsequent and even existing doctrine of uses and trusts, was the introduction from the Roman law of the distinction between the actual or bare possession of the land and its use or benefit, by obtaining grants thereof to some third person, to be holden to and for the religious houses in succession,

thereby enabling them to be entitled to and recover the rents and profits. The chancellors or judges of the Ecclesiastical Courts assumed the power to compel the feoffees, or persons in trust, to perform the same, from which ensued the same inconveniences as from alienations in mortmain. To prevent this, 15 Rich. II. c. 5, enacted that within a time certain, all those persons who, by feoffment or otherwise, were possessed of lands or tenements, fees, advowsons, or other property, to the use of religious people or spiritual persons, should either regularly convey them in mortmain, by licence of the King and Lords, or sell them to some other use, under penalty of forfeiture to the King and Lords, pursuant to the statute *de religiosis*, and that thenceforth no such sale or purchase should be made, so as to entitle the religious house or spiritual person to the rents and profits.

All the Mortmain Acts passed to this time had reference to ecclesiastical persons only, but now similar though smaller dangers were experienced from lay corporations. The last-recited statute, 15 Rich. II. c. 5, therefore declared that its provisions should extend and apply to all lands, tenements, fees, advowsons, and other property purchased or to be purchased for or to the use of "guilds or fraternities." It was further provided that because mayors, bailiffs, and commons of cities, boroughs, and other towns which have a perpetual commonalty, and others which have a perpetual office, were as perpetual as religious people, that from thenceforth such lay corporations should not purchase, under pains of the statute *de religiosis*, lands, tenements, fees, advowsons, or other property.

Other gifts of land not within the previous statutes of mortmain, but equally prejudicial to the public interest,

having much increased, it was, by 23 Hen. VIII., c. 10 (providing against superstitious uses), declared that all assurances and trusts of land to the use of parish churches, chapels, churchwardens, guilds, fraternities, commonalties, companies, or brotherhoods, erected and made of devotion or by common assent of the people without any corporation, or to uses to have obits perpetual, or a continual service of a priest for ever, or for 60 or 80 years, were within the mischiefs of mortmain alienation, and should be utterly void as to such gifts made after the 1st of March in that year for any term exceeding 20 years from the creation of such uses, and that all collateral acts and assurances for evading the provisions of that Act would be utterly void, saving and excepting such cities and towns corporate as by their ancient customs had power to devise hereditaments in mortmain. King Henry VIII. appropriated to his own use all lands then belonging to religious houses and monasteries. 27 Hen. VIII. c. 28, assigned to the King all monasteries, priories, and other religious houses of monks, canons and nuns, who had not lands, tenements, rents, tithes, portions, and other hereditaments above the clear yearly value of £200, together with all their possessions. The monasteries dissolved by the last-mentioned Act were called the smaller abbeys. 31 Hen. VIII. c. 13, declared that all monasteries, priories, nunneries, colleges, hospitals, homes of friars, and other religious and ecclesiastical houses and places, and all their manors, lands, tenements, tithes, and other hereditaments, which, after the 4th day of February in the 27th year of His Majesty's reign, had been, or thereafter should be dissolved, suppressed, renounced, relinquished, forfeited, given up, or by any other means come unto the King, were thereby

vested in his Majesty, and his heirs and successors for ever, and in his or their actual lawful seisin and possession.

The statute 43 Eliz. c. 4, enumerates the following as charitable uses, viz., gifts for relief of aged, impotent, and poor people; for maintenance of sick and maimed soldiers and mariners; for ease of poor inhabitants concerning payment of taxes; for aid of young tradesmen, handicraftsmen and persons decayed; for relief, stock, and maintenance of houses of correction; for marriages of poor maids; for education and preferment of orphans; for schools of learning, free schools and scholars in universities; for relief or redemption of prisoners or captives; for repair of bridges, ports, havens, causeways, churches, seabanks, and highways. In the construction of this and subsequent Acts the courts have decided as within their prohibitive provisions the following, viz.:—A bequest for the education of the poor by means of schools, Attorney-General *v.* Hyde, Ambler 750, Attorney-General *v.* Nash, 3 Brown's Chancery Cases 588; for the relief of the poor by hospitals, Masters *v.* Masters, 1 Peere-Williams 420, Pelham *v.* Anderson, 2 Eden 296, Foy *v.* Foy, 1 Cox 163; a bequest to the poor inhabitants not receiving alms of a particular parish, Attorney-General *v.* Clarke, Ambler 422; to the widows and children of seamen of a specified locality, Powell *v.* Attorney-General, 3 Merivale 48; a gift to the British Museum, British Museum *v.* White, 1 Simons & Stuart 694; or for any other local or general library or museum, Attorney-General *v.* Comber, 2 Simons & Stuart 93; for the improvement of a specified city, Howse *v.* Chapman, 4 Vesey 542, Mitford *v.* Reynolds, 1 Phil. Chancery Cases 185; for the erection of waterworks to the use of a particular town, Jones *v.* Williams, Ambler

651, Attorney-General *v.* Heelis, 2 Simons & Stuart 67; for a public botanical garden, Townley *v.* Bedwell, 6 Vesey 194; for the promotion of the Protestant faith by the maintenance of a preacher thereof in a certain chapel, Grieves *v.* Case, 4 Brown's Chancery Cases 67, 2 Cox 801, 1 Vesey jun. 548, Doe *v.* Copestake, 6 East 328; a devise of land to a priest and his successors, and "a bequest of proceeds of sale of land to the minister of the Catholic chapel at Kendal," Thornley *v.* Wilson, 3 Drewry 245; a bequest of impure personalty to the Newport Catholic Chapel and the Brighton Catholic Chapel for the general purposes thereof, paying to the officiating priest for the time being, and to the sisters of charity of Saint Paul at Selley Oak, near Birmingham, Cocks *v.* Manners, Law Reports 12, Equity 574. In an action against a corporation to have carried into effect certain charitable trusts of a deed of feoffment made by the corporation in A.D. 1599, whereby the feoffees were granted certain lands upon trust to permit the corporation to have the premises, and to receive the rent thereof towards repairing the church and the conduits of the town, the relief of the poor, the maintenance of the bulwarks and fortifications, and other charitable, needful, and necessary uses for the town as to the corporation should seem meet, it was held by Mr. Justice Chitty, that the word "charitable" was not equivalent to "benevolent," but meant the purposes enumerated in the recited statute 43 Eliz. c. 4, or analogous thereto, and that the four objects specified in the deed and other "charitable, needful, and necessary uses" were all charitable within the meaning of the same statute. The court further decided that the corporation was not at liberty to apply the rents to purposes of general utility for the town because those objects were not *ejusdem generis* with those particularized

in the deed of feoffment, and that the deed was not so ambiguous as to entitle the corporation to adduce contemporaneous or subsequent usage to explain its meaning, Attorney-General *v.* Mayor of Dartmouth, 48 L. T. 933; for the benefit of poor Dissenting Ministers in England, Wallis *v.* Childe, Ambler, 524, Attorney-General *v.* Fowler, 15 Vesey 85; an annuity to keep in repair the chimes of a specified parish, Turner *v.* Ogden, 1 Cox 316; to erect an organ gallery in a particular parish church, Adam *v.* Cole, 6 Beavan 353; to a parish clergyman for preaching an annual sermon on a specified day, Toresby *v.* Hollins, Highm 174, 9 Mod. 221; a yearly sum to be paid to singers in a certain church, Turner *v.* Ogden, *supra*; a bequest for the advancement of the Christian religion among infidels, Attorney-General *v.* Virginia College, 1 Vesey Junior 243; to the lineal descendants of W. as they might severally need the charity, to be paid them by the trustees of the fund out of the interest or proceeds thereof, Gillam *v.* Taylor, 16 L. R. Equity 581, 42 L. J. Chancery 674; to establish a fever hospital, Hawkins *v.* Allen, 10 L. R. Equity 246, 40 L. J. Chancery 23; towards the expenses of building a church, Peake *v.* Harvey, 12 L. R. Equity, 54; 25 L. T. 200; to a Church Diocesan Building Society towards erecting a church, without naming any then existing church or site of one, *in re* Lee 27 L. T. 808, 21 W. R. 168; to the Society for the Prevention of Cruelty to Animals, for an object of their charity, Tatham *v.* Drummond, 4 De Gex, Jones & Smith 484; to a corporation of £3,000 consols, of which £1,000 were to be applied to the erection of a dispensary there, and the remaining £2,000 to be invested as an endowment for its maintenance, Cox *v.* Davie, 7 Chancery Division 204, 47 L. J. Chancery 72, 37 L. T. 457; of stock to trustees

to be applied by them for or towards payment of all or any debts or debt, dues, demands, charges, or claims whatsoever which may be owing or chargeable upon or in any manner claimable against an almshouse situated on land then in mortmain, *in re* Lynall's Trusts, 12 Chancery Division 211, 48 L. J. Chancery 684, 28 W. R. 146; a lease to trustees for ninety-nine years of a building used as a dissenting chapel, with a reservation to the lessors of a right of ingress, egress, and regress to and fro, for the use and enjoyment of certain pews therein appropriated for their exclusive possession at a nominal rent, Bunting *v.* Sargeant, 13 Chancery Division 330, 49 L. J. Chancery 109, 41 L. T. 643, 28 W. R. 123; a devise of land or realty to a person or persons upon or subject to a secret trust or private understanding that it be used or applied for a charity, Springett *v.* Simmons, 10 L. R. Equity 488, 39 L. J. Chancery 652, 23 L. T. 132, Johnstone *v.* Hamilton 5 Giffard 30; and a gift for the perpetual repair of a monument in a church, Hoare *v.* Osborne, 1 L. R. Equity 585. A testator directed the surplus of the rents of his house property to accumulate till it should form a fund of £1,000, which he directed to be invested and applied to the erection of a building and the establishment of an institution to train ladies for the important duties of "wives, mistresses, and housekeepers" pursuant to certain principles prescribed by the testator, and for other benevolent purposes. In an action by the heir-at-law to annul those gifts, Mr. Justice Chitty declared them invalid, Wight *v.* Wight, Chancery Division, March 7th, 1885. It will have been observed that the *rationale* of the foregoing series of decisions is that the charities thereby contemplated were of a *public* nature.

The following charities have been holden by the courts not to be prohibited by the statutes of mortmain, viz., a gift to one of the Chartered Companies of the City of London for an increase of their stock of corn for the service of the market there, Attorney-General *v.* The Haberdashers Company, 1 Mylne & Keene 420; for such objects of benevolence as the trustee in his discretion should most approve, Morice *v.* Bishop of Durham, 9 Vesey 399; a devise to trustees of a reversion in land to be applied by them and the officiating minister for the time being of a Methodist congregation as they should think fit to apply the same, Doe *v.* Copestake, 6 East, 328; a grant in fee of land and a chapel on it to trustees for the use of the church and congregation then worshipping therein, reserving to the grantor, during her life solely, the power to appoint the minister of religion to officiate in the chapel, and to ordain rules for their ministration, and to the trustees after her death, Grieves *v.* Case, 2 Cox, 301; a grant by deed of land to trustees upon conditions from time to time to repair a vault and tomb in part of it, and, if need should be, to rebuild and permit it to be used as a family vault by the grantor and any of her family, Doe *d.* Thompson *v.* Pitcher, 3 Maule & Selwyn 407, Lloyd *v.* Lloyd, 2 Simons, N. S 255; a gift to the Mayor of Dublin for such objects as he should deem most deserving, Harris *v.* Du Pasquier, 26 L. T. 689; a gift to a Friendly Society, *in re* Clark, 1 Chancery Division, 497; a gift of impure personalty to trustees to be divided among such charities in England as they should most approve, Lewis *v.* Allenby, 10 L. R. Equity, 668; a gift to a religious society, the members of which spend their time in devotional exercise and retirement within their own

institution, and do not practise public acts of charity and education, Cocks *v.* Manners, 12 L. R. Equity 574, 40 L. J. Chancery 640; a gift to ten poor clergymen to be selected by A. Thomas *v.* Howell, 18 L. R. Equity, 43 L. J. Chancery 799; a legacy for the use or benefit of a borough town, or of the inhabitants, or of the institutions in the borough, Mayor of Wrexham *v.* Tamplin, 28 L. T. 761; a bequest of money to be applied in building almshouses, when land should be given for the purpose, Chamberlayne *v.* Brockett, 8 L. R. Chancery 206, 42 L. J. Chancery 368, *In re* White's Trusts, 51 L. J. Chancery 830; a bequest of money for supporting or founding free or ragged schools for poor children in a named parish, where a free school existed for the education of the children of the poorest inhabitants of which the testator was the chief supporter, *In re* Hedgman, Morley *v.* Croxon, 8 Chancery Division 156; a bequest of a sum of money to be raised from real property and applied in erecting a monument to the testator, Mellick *v.* The Asylum, 1 Jacob 180, Adam *v.* Cole, 6 Beavan 353; a devise of freehold estates to the use of the Bishop of B. for the time being, in trust for the Sisters of Mercy of B., who at the testator's death were ten or twelve in number, and whose mission was entirely charitable, *In re* Delany's estate, 9 Law Reports, N. 226. It will have been observed that the principle on which the last hereinbefore cited series of cases were held not to be within the prohibition of the Statutes of Mortmain was, that the charities thereby contemplated were of a *private* nature only.

The object of the statutes against mortmain previously considered was to prevent land becoming the property of corporations or corporate bodies, and consequently inalienable. The Acts subsequently passed on the subject apply

to lands granted or given to individual persons, as well as to corporations, for a religious or charitable use or purpose. The principal statute regulating such grants and gifts is 9 Geo. II. c. 36, A.D. 1736, intituled "An Act to restrain the dispositions of lands whereby the same become inalienable." The provisions of this important statute are as follows, viz.:—

"I. Whereas gifts or alienations of lands, tenements, or hereditaments in mortmain are prohibited or restrained by Magna Charta, and divers other wholesome laws, as prejudicial to and against the common utility; nevertheless, this public mischief has of late greatly increased by many large and improvident alienations or dispositions made by languishing or dying persons, or by other persons to uses called charitable uses, to take place after their deaths, to the disherison of their lawful heirs; for remedy whereof, be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of June, which shall be in the year of Our Lord One thousand seven hundred and thirty-six, no manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal whatsoever, nor any sum or sums of money, goods, chattels, stocks in the public funds, securities for money, or any other personal estate whatsoever to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments shall be given, granted, aliened, limited, released, transferred, assigned, or appointed, or any ways conveyed or settled to or upon any person or persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever, or any ways charged or incumbered by any person or persons whatsoever, in trust or for the benefit of any charitable uses whatsoever, unless such gift, conveyance, appointment, or settlement of any such lands, tenements, or hereditaments, sum or sums of money, or personal estate other than stocks in the public funds, be, and be made by deed, indented, sealed and delivered in the presence of two or more credible witnesses, twelve calendar months at least before the death of such donor or grantor (including the days of the execution and death) and be enrolled in His Majesty's High Court of Chancery within six calendar months next after the execution thereof: and unless such stocks be transferred in the public books usually kept for the transfer of stock, six calendar months at least before the

death of such donor or grantor (including the days of the transfer and death) and unless the same be made to take effect in possession for the charitable use intended, immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him.

II. Provided always that nothing hereinbefore mentioned relating to the sealing and delivery of any deed or deeds twelve calendar months at least before the death of the grantor, or to the transfer of any stock six calendar months before the death of the grantor or person making such transfer, shall extend, or to be construed to extend, to any purchase of any estate or interest in lands, tenements, or hereditaments, or any transfer of any stock to be made really and *bonâ fide* for a full and valuable consideration actually paid at or before the making such conveyance or transfer without fraud or collusion.

III. And be it further enacted by the authority aforesaid, that all gifts, grants, conveyances, appointments, assurances, transfers, and settlements whatsoever, of any lands, tenements, or other hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect any lands, tenements or hereditaments, or of any stock, money, goods, chattels, or other personal estate or securities for money to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect the same, to or in trust for any charitable uses whatsoever, which shall at any time, from and after the said twenty-fourth day of June, one thousand seven hundred and thirty-six, be made in any other manner or form than by this Act is directed and appointed, shall be absolutely and to all intents and purposes null and void.

IV. Provided always that this Act shall not extend, or be construed to extend, to make void the dispositions of any lands, tenements, or hereditaments, or of any personal estate to be laid out in the purchase of any lands, tenements, or hereditaments which shall be made in any other manner or form than by this Act is directed, to or in trust for either of the two universities, within that part of Great Britain called England, or any of the colleges or houses of learning within either of the said universities, or to or in trust for the colleges of Eton, Winchester, or Westminster, or any or either of them, for the better support and maintenance of the scholars only upon the foundation of the said colleges of Eton, Winchester, and Westminster.

Sec. 2 of the last recited Act was explained by 9 Geo. IV. c. 85, to prevent purchases and subsequent conveyances for valuable consideration from being null and void by reason of the death of the grantor within one year after the sealing and delivering of the deed, and not entirely to exempt such conveyances from the operation of 9 Geo. II. c. 36, s. 1. It is, therefore, advisable, notwithstanding that exemption, to comply with that section. The same statute confirmed all previous purchases and conveyances for valuable consideration for charitable uses, which took immediate effect in possession, not theretofore annulled or the subject of legal contention.

To entitle the conveyance to the protection of s. 2, in the case of a *bonâ fide* purchase for full valuable consideration, actually paid at or before the making thereof, it has been decided that the consideration-money must be paid to the grantor by the person or party for whose benefit the conveyance is made. If paid to any other person than the grantor, or by any other person or persons than those who derive its benefit, the conveyance is void, unless made in strict compliance with s. 1. Where a person in custody for having left his family chargeable to a parish, in consideration of £174 having been expended by the parish officers in maintaining them, conveyed land for 60 years, if he should so long live, to the churchwardens and overseers, for the time being, of the parish, in trust to apply the current rents and profits in aid of the poor rate, it was holden that the deed of conveyance should have complied with the requirements of s. 1 referred to, because the consideration was not paid by the persons who received the conveyance and its benefits, but from rates previously levied upon former ratepayers—the parishioners in general (Doe *d.* Preece *v.* Howells, 2

Barnewell & Adolphus 744); also, where a person possessed of a piece of land for a term of years, in 1796, built, at his own expense, a chapel upon it, and in 1806 a sum of £800 was subscribed by the congregation, and applied to enlarge and improve the chapel, whereupon, and in consideration thereof, the original lessee granted an underlease by ordinary deed to twelve persons, which contained a declaration or trust that the chapel was to be used for the worship of Almighty God by a society, church, or congregation of Protestants, under the control of the Countess of Huntingdon's College, at the rent of a peppercorn, during the life of the grantor, and afterwards at a yearly rent of £10 during the residue of the term, it was holden that the transaction did not come within the protection of s. 2 aforesaid, because the £800 was not a valuable consideration paid to the grantor for the demise or underlease, but an expenditure for the convenience of the church or congregation in enlarging and improving their chapel (Doe *d.* Wellard *v.* Hawthorn, 2 Barnewell and Alderson 96).

The courts have decided that lands of copyhold tenure are within the provisions of the last recited Act in the same sense as freehold property, and void if granted by the copyholder in his lifetime by surrender or by will. In 1743 copyholds were surrendered to the use of certain persons in fee, in trust for the use, benefit, and habitation of the poor of the town of Rothwell for ever. The trustees were admitted tenants in 1743, and the heir of the surviving trustee in 1813. No evidence was adduced of the death of the surrenderor. In ejectment by the heir of the last surviving trustee, it was held that the surrender was void by the last recited Act, none of its provisions having been complied with, and that lands of copyhold tenure

were equally with freehold within the meaning of the statute, and liable to the mischiefs thereby intended to be prevented (Arnold *v.* Chapman, 1 Vesey 108; *see* also Doe *d.* Howson *v.* Waterton, 3 Barnewell & Alderson 149).

This statute has been holden to extend to land of every tenure and character, and to every estate or interest in or charge, lien, rent, or profit upon or issuing out of land. It is a settled rule of law that in the construction of deeds, wills, or grants, or gifts made null by statute, or void by the common law as *contra bonos mores*, evidence to impeach its validity may be adduced from surrounding and collateral facts or circumstances, as well as from its context. It is, therefore, not incumbent that the illegal use, trust, or purpose should be expressed in the deed or will, but may be proved by or inferred from external evidence. Accordingly a declaration of trust by one of several trustees is proof of the object of the conveyance against the others (Doe *d.* Wellard *v.* Hawthorn, 2 Barnewell & Alderson 102).

The grant for a religious or charitable use must take immediate effect and in possession. If its operation be postponed for any period, long or short, or if it contain any reservation affecting the whole or part of the property therein comprised, either in quantity or interest, or if any use or trust be declared, or any benefit be reserved to the grantor, it is void (Lambrey *v.* Gurr, 6 Maddox 151). Following out this principle, it was decided that a grant of land which was subject to a lease for a term of years at a reserved rent was void, because it did not pass the rent and all other the grantor's interest to the grantee (Wickham *v.* Marquis of Bath, 11 Jurist, N.S. 988). A deed of assignment duly executed and enrolled of a leasehold estate from the lessor to the master, fellows, and scholars of Trinity College, Cambridge, in trust to permit the

Rector for the time being of the parish of "A" to hold, use, and occupy the estate during his incumbency, or otherwise to receive and take the rents and profits thereof for his own use and benefit, was upholden, notwithstanding that the lessor and grantor was Rector of the parish of "A" at the time of the grant, and had retained the deed in his own possession after he executed it (Attorney-General *v.* Munby, 1 Merivale, 327-342).

An important exception to the particular provision of the last recited Act followed by the last-mentioned decisions thereon is contained in 26 & 27 Vic. c. 106, "That every deed or assurance by which any land shall have been demised for any term of years for any charitable use shall for the purposes of 9 Geo. II. c. 36, and others, be deemed to have been made to take effect for the charitable use thereby intended immediately from the making thereof, if the term for which such land shall have been thereby demised was thereby made to commence and take effect in possession at any time within one year from the date of such deed or assurance."

A further important enactment is contained in 27 Vic. c. 13, s. 4: "That every full and *bonâ fide* valuable consideration within the meaning of those Acts, which shall consist wholly or partly of a rent or other annual payment reserved or made payable to the vendor or grantor, or to any other person, shall be as valid and have the same force and effect as if such consideration had been a sum of money actually paid at or before the making of such conveyance without fraud or collusion."

It suffices if the grant be duly executed by the grantor alone before enrolment, its previous execution by the grantees being unnecessary, Grieves *v.* Case, *supra*; but the execution must take place in the presence of, and

be attested by, two or more witnesses—an acknowledgment of its previous execution by the grantor being insufficient (Wickham *v.* Marquis of Bath, *supra*).

The courts will not presume the due enrolment of the deed after a lapse of 70 years from its execution, followed by a possession under the deed for 50 years, but the enrolment must be proved (Doe *d.* Howson *v.* Waterton, 3; Barnewell & Alderson, 149; Wright *v.* Smithies, 18 East, 409). It was held by Mr. Justice Pattison, and afterwards confirmed by the Court *in banco*, on motion for a new trial or judgment *non obstante veredicto* that 9 Geo. II. c. 36, s. 1, applied to the original or first deed of conveyance of land or other real property for a religious or charitable use or purpose, which alone required compliance with the conditions or requirements of that section; and that every subsequent disposition or dealing with the same land or property was unaffected by the statute, on the ground that, being in mortmain, it remained so (Walker *v.* Richardson, Trinity Term, 1,837, Exchequer 2, Meeson & Welsby, 882; *see* also Ashton *v.* Jones, 28 Beavan, 460, 16 Jurist. N.S. 970). A building used as a Dissenting chapel, though not so mentioned in the deed, was demised for 99 years to trustees thereof, and contained a covenant for renewal of the lease at the yearly rent of one shilling. New trustees of the chapel were appointed, pursuant to 13 & 14 Vic. c. 28, shortly before the expiration of the term. The trustees gave the reversioner notice of their intention and wish to renew the lease. No rent had been paid for 20 years, but at the time of giving the notice for renewal, part of the rent in arrear was paid to and accepted by the reversioner, who, notwithstanding, in five years afterwards brought ejectment against the trustees to recover the building. It was

held that the grant, by way of demise, was within the meaning of s. 1, 9 Geo. II. c. 36, and not having been enrolled as thereby required was void (Bunting *v.* Sargent, 13 Chancery Division, 330; 49 L. J., Chancery 109). The Court also intimated, in the last case, that if the lease contained a power to sell the chapel and apply the proceeds to other than charitable purposes, it would still have been a conveyance within the prohibition of the statute. It was further held that the plaintiff's right of action was not barred by 3 & 4 Will. IV. c. 27, for limitation of real actions. A conveyance in trust for charitable uses duly enrolled, though made in pursuance of deeds not enrolled relating to the same land, preliminary to the same object and necessary to the title, is valid (Attorney-General *v.* Munro, Holt Reports, 103). The court will appoint new trustees of land for a charitable use, though the original deed declaring it was not enrolled, if the trustee have the legal estate and admit the trust, and does not object that the first deed is void, but submits to the order of the court (Attorney-General *v.* Ward, 6 Hare, 477); *semble*, a mortgage to the trustees of a charitable fund does not require enrolment (Doe *d.* Graham *v.* Hawkins, 2 Queen's Bench, 212).

The statute 24 Vic. c. 9, s. 1, enacts that no deed or assurance thereafter to be made for any charitable uses whatsoever of any hereditaments of any tenure whatsoever, or of any estate or interest therein, shall be deemed to be null and void within the meaning of 9 Geo. II. c. 36, by reason of such deed or assurance not being indented nor purporting to be indented, nor by reason of such deed or assurance, or any deed forming part of the same transaction containing any grant or reservation of any peppercorn or other nominal rent, or of any mines or minerals or easements, or covenants or provisions as to the erection or repair, position or description of buildings, the formation or repair of streets or roads, drainage or nuisances, or any covenants or provisions of the like

nature for the use and enjoyment, as well of the hereditaments comprised in such deed or assurance as of any other adjacent or neighbouring hereditaments, or any right of re-entry on non-payment of any such rent, or on breach of any such covenant or provision, or any stipulations of the like nature for the benefit of the donor or grantor, or of any person or persons claiming under him, nor in the case of any such assurance of hereditaments of copyhold or customary tenure, or of any estate or interest therein by reason of the same not being made by deed, nor in the case of such assurance made *bonâ fide* for a full and valuable consideration by reason of such consideration consisting wholly or partly of a rent, rent-charge, or other annual payment reserved or made payable to the vendor or to any other person with or without a right of re-entry for non-payment thereof: Provided that in all reservations authorized by that Act, the donor, grantor, or vendor shall reserve the same benefit for his representatives as for himself.

Sec. 2 of the same Act provides that when the charitable uses of any deed to be thereafter made for the conveyance of any hereditaments shall be declared by a separate deed or instrument, it shall not be necessary to enroll the deed of conveyance thereof, but the same shall be null and void unless the separate deed or instrument containing the charitable uses shall, within six calendar months after the making thereof be enrolled in the Court of Chancery.

Sec. 3 declared that no deed or assurance theretofore made under which possession was then held for the charitable use of hereditaments of any tenure or of any estate or interest therein made really and *bonâ fide* for a full valuable consideration, actually paid at or before the making thereof, or reserved by way of rent, rentcharge, or other annual payment, or partly paid or partly reserved as aforesaid without fraud or collusion, should be null and void if such deed or assurance were made to take effect in possession for the charitable use intended immediately from the making thereof, without power of revocation, and was, prior to that Act, or should be within twelve calendar months afterwards enrolled in the Court of Chancery.

Sec. 4 declares that when the charitable use of any deed of conveyance of any hereditaments theretofore made for full valuable consideration and under it possession was then held for such use, was declared by any separate deed or instrument which was enrolled, such enrolment should suffice, though the deed or assurance of conveyance were not enrolled, but if neither of such deeds or instruments were enrolled before that Act, then the deed or instrument declaring the charitable use might be enrolled within

twelve calendar months after the passing of that Act, and such enrolment as provided in that section should validate the conveyance of the hereditaments to the charitable use declared."

The statute 25 Vic. c. 17, s. 5, declares that in all cases in which money shall have been really and *bonâ fide* expended before the passing thereof in the substantial and permanent improvement, by building or otherwise for any charitable use of land of any tenure, of which possession was then held by virtue of any deed or assurance conveying or purporting to convey the same, or declaring any trust thereof for such charitable use, all money so expended should be deemed equivalent to money actually paid by way of consideration for the purchase of the land.

Statute 27 Vic. c. 13, s. 3, provides for the enrolment of any subsequent deed containing the charitable use by summary application to the Court of Chancery, where the original deed should have been lost or destroyed by time or accident; and s. 4 enacts that every full and *bonâ fide* valuable consideration within the meaning of the Mortmain Acts, which should consist wholly or partly of a rent or other annual payment reserved or made payable to the vendor or grantor, or to any other person, should be as valid and have the same force and effect as if such consideration had been a sum of money actually paid at or before the making of such conveyance without fraud or collusion.

Statute 29 & 30 Vic. c. 57, enables any trustee, governor, director, or manager of any charity, or any person entitled to act in the management thereof, or interested therein by summary application to the Court of Chancery to obtain an order for the enrolment within six calendar months thereafter of any deed or assurance, whereby

hereditaments of any tenure or estate had been or should be given, granted, or conveyed, settled or charged for charitable uses, not properly enrolled, or any subsequent or other deed or instrument containing a statement of the charitable use, when the original should be lost or destroyed, and that no previous acknowledgment by the grantor should be necessary.

Statute 31 & 32 Vic. c. 44, enacts that all alienations, grants, conveyances, leases, assurances, surrenders, or other disposition except by will *bonâ fide* made after the passing thereof to a trustee or trustees, on behalf of any society or body of persons associated together for religious purposes, or for the promotion of education, arts, literature, science, or other like purposes, of land for the erection thereon of a building for such purposes, or any of them, or whereon a building for such purposes, or any of them, should have been erected, should be exempt from the provisions of the said Act 9 Geo. II. c. 36, and of the said Act 24 Vic. c. 9, s. 2, provided such alienation grant, conveyance, lease, assurance, surrender, or other disposition, should have been really and *bonâ fide* made for a full valuable consideration actually paid upon or before the making thereof or reserved by way of rent, rent-charge, or other annual payment, or partly paid and partly reserved as aforesaid, without fraud or collusion, and provided that each such piece of land should not exceed two acres.

Sec. 2 enables the trustee or trustees of any such deed or instrument as thereinbefore mentioned, if he or they should think fit, at any time to cause the same to be enrolled in the Court of Chancery; and s. 3 declares that thereafter it should not be necessary to acknowledge any deed or instrument before the enrolment thereof.

The effect of the last-mentioned statute is most important and sweeping, as it places all deeds of conveyance or assurance of land, not exceeding two acres in extent, with or without a building thereon, to a trustee or trustees for any religious, educational, literary, scientific, or like use or object, made or to be made *bonâ fide* for full valuable consideration as therein provided, upon the same footing and subject to the same solemnities and requirements only as ordinary deeds or assurances for the conveyance of land. Even enrolment of the deed or instrument of assuranee therein contemplated is not nor will be necessary, but such a step would be in all such cases prudent and advisable to provide against the loss, destruction, or mutilation of the deed or assurance, and to preserve the contents thereof permanently on the public roll, for the use and inspection of every person interested therein.

Statute 33 & 34 Vic. c. 34, enables corporations and trustees holding moneys in trust for public or charitable uses or purposes, to invest the same on real security, without being amenable to the provisions of any statute of mortmain, and without compliance with the solemnities referred to by the said Act 9 Geo. II. c. 36, but the property comprised in every such security shall, if necessary, be sold and converted into money, and not foreclosed, in order to enforce or realize the same.

Statute 34 Vic. c. 13, s. 4, enacts that from and after the passing thereof, all gifts and assurances of land of any tenure, whether made by deed or will or codicil only, of a public park or school-house for elementary education or a public museum, and all bequests of personal estate to be applied in or toward the purchase of land for all or any of such purposes only, should be valid, notwithstanding

the statutes of mortmain; provided that every such will or codicil and every deed containing every such gift or assurance made otherwise than for full valuable consideration should, to be valid under that Act, be made twelve calendar months at least before the death of the testator or grantor, and should be enrolled in the books of the Charity Commissioners within six calendar months next after the same will, codicil or deed should come into operation, and provided that every such gift by will or codicil should not be of more than twenty acres of land for any one public park, or of more than two acres for any one public museum, or of more than one acre of land for any one such school-house.

Statute 36 & 37 Vic. c. 50, s. 1, enacts that any person or persons being seised or entitled in fee simple, fee tail, or for life or lives, of or to any manor or lands of freehold tenure, and having the beneficial interest therein, and being in possession for the time being, may grant, convey, or enfranchise by way of gift, sale, or exchange in fee simple or for any term of years, any quantity not exceeding one acre of such land, not being part of a demesne or pleasure ground attached to any mansion house, as a site for a church, chapel, meeting-house, or other place of Divine worship, or for the residence of a minister officiating in such place of worship, or in any place of worship within one mile of such site, or for a burial-place, or any number of such sites, provided that each such site does not exceed the extent of one acre, and provided that no such grant, conveyance, or enfranchisement made by any person seised or entitled for life or lives only of or to any manor or lands shall be valid unless the person next entitled to the same for a beneficial interest in remainder in fee simple or fee tail, if legally competent, shall be a party to and join

therein, or if such person be a minor or under any other legal disability, unless the guardian, husband, or committee shall concur. It is also provided that if such land so granted should be used for any purpose other than a site for such place of worship, or residence, or burial place, or in case of a place of worship or residence, shall cease for a year to be used for the purpose, the same shall revert to and become a portion of the lands from which it was severed by such grant, and that those provisions should apply to lands of copyhold or customary tenure if the conditions of the Lands Clauses Consolidation Act, 1845, with respect to such lands should be complied with.

Sec. 2 provides for payment of the money to be received on such purchase or otherwise to the tenant in fee simple or tail, and to the trustee or trustees of a tenant for life or lives of the land granted.

Sec. 3 enables a beneficial tenant in fee simple or tail to convey as aforesaid without the concurrence of the trustee, and empowers husband and wife to convey by deed without acknowledgment land held in right of the wife, and the guardians of a minor and committee of a lunatic to convey as aforesaid, and give discharges for any consideration money.

Sec. 4 provides a very short and simple form of assurance of land granted under that Act, which is optional, and the grantee may adopt any other mode of conveyance, to the execution of which, by each party thereto, one witness shall suffice, and the grant shall be valid though the grantor die within one year of its execution.

Semble, the privileges conferred by the last recited Act are confined to a grant of *land* only, and if a church, chapel, house, or building should be on the land at the time of

the grant, the provisions of the statute do not apply. It further appears the Act does not extend to the grant of a rent-charge, rent, right of way or light, or other easement or profit, in, upon, or out of land.

A father who is also tenant for life of the estates—consequently natural guardian of his infant son entitled thereto in remainder—can concur on behalf of his son in a grant by himself of a church site, part of the settled estate (*re* Marquis of Salisbury and The Ecclesiastical Commissioners, 34 L. T. Rep., N. S., 2 Ch. D. 29).

The Act 45 & 46 Vic. c. 21, intituled "An Act to amend the Places of Worship Sites Act, 1873," supplements the powers conferred by it. After reciting that by the Places of Worship Sites Act, 1873, facilities were afforded for the conveyance of pieces of land not exceeding in quantity one acre for sites for places of religious worship and for burial-places, but doubts had been entertained whether conveyances could be made under that Act by corporations and public bodies, and it was expedient to remove such doubts; and that cases had arisen in which tenants for life were unable to make conveyances under the said Act by reason that the person next entitled to the manor or lands for a beneficial interest in fee-simple or fee-tail was unborn or unascertained; and it was expedient to grant increased facilities for making such conveyances. It was therefore enacted as follows:—

1. 5 & 6 Will. IV. c. 69.—The Places of Worship Sites Act, 1873, shall be construed as extending to authorize any corporation, ecclesiastical or lay, whether sole or aggregate, and any officers, justices of the peace, trustees or commissioners, holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, to grant, convey, or enfranchise for the purposes of the Act, such quantity of land as therein mentioned. Provided as follows:

(*a*) An ecclesiastical corporation sole, being below the dignity of a Bishop, shall not make any such grant without the consent in writing of the Bishop of the diocese to whose jurisdiction he is subject.

(*b*) A Muncipal Corporation shall not make any such grant without the consent in writing of the Commissioners of Her Majesty's Treasury.

(*c*) Parochial property shall not be so granted without the consent of a majority of the ratepayers and owners of property in the parish to which the property belongs, assembled at a meeting to be convened according to the mode pointed out in the Act of the session held in the fifth and sixth years of the reign of King Will. IV. c. 69, intituled "An Act to facilitate the conveyance of workhouses and other property of parishes, and of incorporations or unions of parishes in England and Wales," and of the Local Government Board and of the Guardians of the Poor of the parish or of the union comprising the parish, testified by their being parties to the conveyance.

(*d*) Property held on trust for charitable purposes shall not be so granted without the consent of the Charity Commissioners for England and Wales.

2. The said Act shall be construed as extending to authorize any person seized or entitled only for life or lives of or to any manor or lands of freehold tenure to make such grant, conveyance, or enfranchisement as is mentioned in the said Act in cases where the person next entitled to the same for a beneficial interest in remainder in fee-simple or fee-tail is unborn or unascertained: Provided that no such grant, conveyance, or enfranchisement made by any such person seized only for a life or lives, shall be valid unless the person seized or entitled for a beneficial interest for life or lives, or for an estate in fee-simple or fee-tail (as the case may be) in remainder immediately expectant on the estate of such unborn or unascertained person of or to such manor or lands (if any, and if legally competent), shall be a party to and shall join in the same; and if there be no such person, or if such person be not legally competent, unless the trustees or trustee (if any) of such manor or lands during the suspense or contingency of the then immediate or expectant estate in fee-simple or fee-tail in such manor or lands shall in like manner concur.

3. This Act may be cited as "The Places of Worship Sites Amendment Act, 1882."

Mr. Broadhurst, M.P., introduced to the House of Commons, in the Session of 1885, a Bill to facilitate the

acquisition of sites for places of public worship otherwise than by voluntary agreement; and, from the general approval it received on the motion for its second reading, it is probable that the principles of the Bill will become law in a future Parliament.

The procedure proposed is simple. A requisition, signed by twenty owners of land in the particular parish or adjoining parishes, must be served on the owner and occupier of the land asked for, accompanied by a plan of the site and a description of the religious denomination for whom it is required. After a lapse of six months the requisitionists must present a memorial, stating their inability to obtain the site by consent, to the County Court of the district or Quarter Sessions, accompanied by a deposit of £100. The Court, after hearing all parties interested, will grant or refuse the memorial, and subject to any conditions. The conveyance of the site to the denomination will be executed six months after the order, but the amount of the compensation to the owner must be lodged previously.

The statute 48 Geo. III. c. 108, provides that all persons may, by will executed three months at least before death, devise all their estate in real property not exceeding five acres, and bequeath goods and chattels not exceeding £500 in value, for erecting, repairing, purchasing, or providing any church or chapel where the liturgy of the Church of England shall be used, or any mansion house for the residence of any minister of the Church of England officiating in such church or chapel, or any outbuildings, churchyard, or glebe for the same, and that any gift exceeding five acres of land, or £500 in personal property, shall, on petition to the Lord Chancellor, in a summary way be reduced to those several limits, but that no

glebe containing upwards of fifty acres shall be increased by a gift under that Act of more than one acre.

The owner in fee of land of about one acre in extent upon which he had built a chapel, licensed for worship by the Bishop of the diocese, devised all his real estate to his wife, and died soon afterwards. The devise was made pursuant to a secret agreement that after the testator's death his widow should hold the property in question upon trust to convey it in perpetuity for a parish or district church, which she did. Vice-Chancellor Bacon held that the devise was valid under 48 Geo. III. c. 108, which contemplated the providing a church or chapel, and was not rendered illegal by 9 Geo. II. c. 36 (O'Brien *v.* Tyssen, L. T. Rep., vol. li., N. S. 815; *vide* also Dixon *v.* Baker, 3 Younge & Collyer, 677).

A testator in contemplation of his death conveyed real estate for a charity, and in ten days afterwards bequeathed by his testament a sum of £3,000 which was the capital value of the real estate, and a further legacy of £250 to the same charity. On a bill filed to have the estate administered, and an information on behalf of the charity to have the benefit of the grant and bequest, the master was directed to report a scheme for the purpose. The master proposed to lay out the £3,000 in purchasing and paying for the real estate, which had failed the charity by reason of the death of the grantor within one year of the execution of the conveyance, and the £250 in the purchase of other land convenient for building a charity school. Lord Chancellor Hardwicke, after hearing counsel on the point of carrying the purchase and scheme into execution, said: "There is something in this case which may open a wide door to evade the statute, although the testator might not have intended any such fraud; but if such a precedent

were made, it would be adopted by persons who knowing if they died within a year after the execution of grants of land or other real property to a religious or charitable use, the Act would annul the gifts, bequeath by testament the value of the land or real property so granted upon a secret understanding that, should the devise fail, the legacy was to be applied in purchasing the land, and thus a testator's intent would aggravate the device, and create a reason for discouraging such evasions of the statute." The information was dismissed (Attorney-General *v.* Day, 1 Vesey Sen. 218). In the subsequent case of the Attorney-General *v.* Davies, 9 Vesey 543, the then Master of theRolls, Sir William Grant, observed that one of the grounds of refusing to execute the agreement for applying the legacy in purchase of the real estate which had failed the charity by the conveyance was that it would be an evasion of the statute of mortmain, and an indirect method of giving real property for a religious or charitable use, if the Act would have been evaded by that sort of bargaining between the representatives of a deceased testator, because it might be supposed to originate from an indication in the will to that effect. It is quite clear that a direct bargain by the will offering money as consideration for putting land in mortmain would be a direct infringement of the statute, so it would be an absurd distinction that a testator should not give land to a charity, but that he might give money in consideration of another person giving land for that purpose.

Following the principle and *dicta* established and pronounced in the last-mentioned cases, it has been decided that a gift by way of devise of land or bequest of money in a will for a religious or charitable use, is void if the object evidenced or thereby apparent should be to secure

for such purpose the possession or enjoyment of real property; as a bequest of money on condition that the legatee shall furnish land for the religious or charitable use (Attorney-General *v.* Hull, 9 Hare 647, Langstaff *v.* Remuson, 1 Drewry 28). Also a devise of land provided the devisee shall pay a sum of money to the executors, who are directed to apply the residue of the testator's estate, which included land, to a charity, in which case the bequest of money is void, and will enure for the benefit of the heir-at-law of the testator (Arnold *v.* Chapman, Vesey Senior 108, Poor *v.* Mial, Maddock & Geldart 32).

Cognate in principle are the cases of Corbyn *v.* French, 4 Vesey 418, and Waterhouse *v.* Holmes, 2 Simons 162. The former case decided that a bequest of money to redeem a mortgage of freehold or leasehold property, where the equity of redemption is vested in trustees for a charity, is void. In that case the testator directed the residue of his estate to be sold, and the proceeds to be invested by his trustees in the public funds, and the dividends to arise therefrom to be paid to his wife for her life, and afterwards to raise and pay £500 part thereof to the trustees of a chapel to be applied by them in discharging a mortgage thereon. It appeared that the chapel was conveyed to a mortgagee in fee for securing the repayment of £1,000 and interest, but the same had been paid off out of the chapel funds, and the chapel was reconveyed to the trustees in the lifetime of the testator and previously to the execution of his will. The court held that the legacy was to have been applied in the purchase of an interest in land, or of a charge or incumbrance affecting land, and that it came within s. 3 of 9 Geo. II. c. 36, and was void. In Water-

house *v.* Holmes the same doctrine was extended to the discharge of an equitable mortgage of or a charge or lien of land belonging to a charity. There the testatrix by her will gave all her personal estate to trustees upon trust *inter alia*, to pay thereout £400 to the trustees or treasurer of a Methodist chapel, to be applied in the first place in discharging any debt which might be owing on the chapel, and the surplus for such purposes of the chapel as the trustees or treasurer should think fit. There was at the death of the testatrix a debt of £439 12s. 7d. due to the subscribers of money for the chapel who claimed to be equitable mortgagees, and to have a lien on the title-deeds of the chapel which were in their possession, for the repayment of the sums so advanced by them, but there was no other debt owing from or in respect of the chapel. The court held the bequest to be void. But if the bequest be of a sum of money to pay and discharge debts incurred in respect of a church or chapel, but not constituting in law a charge or lien upon it, the bequest would be valid and upholden (Bunting *v.* Marriott, 19 Beavan 163). It will have been observed that in Corbyn *v.* French the bequest was held void because it was given with the view of discharging a mortgage debt of the chapel, although by the payment thereof out of the chapel fund, even previously to the date and execution of the will, its application for the purpose therein expressed—the discharge of the mortgage debt in whole or part—was rendered impossible.

A conveyance of land for the purpose of building a poor's house is not prohibited by the statutes of mortmain (Burnaby *v.* Barsby, 4 H. & Nor., 690). Several persons subscribed money to purchase land for a charity. In 1838 the land was conveyed to such uses as one of the subscribers should appoint, who in the following year

appointed the land to the use of trustees on trusts for the charity. The deeds made in 1838 were not attested by two witnesses, and were not enrolled in Chancery, but the deed of appointment executed by one of the subscribers in 1839 was duly enrolled but was not executed in the presence of and attested by two witnesses. On information and bill filed to carry the several deeds into effect, the court held that the conditions of 9 Geo. II. c. 36, s. 1, were not fulfilled, and that the trusts of the appointment in favour of the charity could not be enforced (Attorney-General *v.* Gardner, 2 De Gex & Smale, 102, Doe *d.* Barber *v.* Munro, 12 Meeson & Welsby, 845; Attorney-General *v.* Munro, 2 De Gex & Smale, 122).

A gift of land directed to be sold and the money to be applied for a religious or charitable use is within this section (Jeffreys *v.* Alexander, 7 De Gex, Macnaghten & Gordon, 535). In 1585 real property was conveyed to two persons upon a secret trust for a London parish, the income from which was received by the churchwardens of the parish and devoted to charitable purposes. The court held that a trust of property for a parish or the parishioners could be supported only as a charitable trust, and that the property conveyed in this case was a charitable trust within the Mortmain Act (Attorney-General *v.* Webster, 20 L. R., Equity 483, 44 L. J. Chancery 766). The court, in the last case, intimated although the parishioners may hold an advowson for their aggregate benefit, and nominate the incumbent of their parish, that is an exception to the general law, and that other property held upon trust for the parishioners or the parish was charity property, and would be so considered in the disposition of it. A lady executed a deed of gift, duly enrolled, of lands at H. to

three trustees for establishing a charity, and died within a year afterwards, but by will devised the same land to A., B., and C., two of whom were trustees of the said deed, if she had not in her lifetime made an effectual conveyance thereof. The lady, by the same will, devised the "rest" of her hereditaments at H., and all her hereditaments at S. and W. to the plaintiff, who filed his bill impeaching the devise, as a secret trust for a charity, and claiming the whole of the land at H. The court held that as the testatrix devised the land in full confidence that the devisees would carry out her intentions, and that the trust for that end was accepted by them, the devise was void (Springett *v.* Jennings, 10 L. R. Equity 488, 39 L. J. Chancery, 652). It was in the last case decided, further, that the words used by the testatrix, "the rest of my land at H.," did not constitute a residuary devise within the Wills Act, 7 Will. IV. and 1 Vic. c. 26, s. 25, and that those lands were undisposed of. A person devised and bequeathed to four members of a Presbyterian church of which the testator was a member, whom he also appointed executors of his will, all the residue of his freehold, leasehold, and personal estates absolutely. In a suit to carry out the will, it was admitted that the testator did not intend the trustees to enjoy the property devised to them beneficially, but would devote the same for the benefit of a Presbyterian college to which the testator had been a donor. It was holden that the gift of the leasehold property was void, and lapsed to the Crown (Johnstone *v.* Hamilton, 5 Giffard, 30). For the purpose of ascertaining whether a gift by deed or will is made on a secret trust for a religious or charitable use, the court in a suit contesting the gift will compel the grantee or devisee to answer upon oath whether the gift was made upon such

a secret trust, or promise to that effect (Strickland *v.* Aldridge, 9 Vesey, 519; Boson *v.* Statham, 1 Cox, 16). But the onus of proving the secret trust lies on the party impeaching the gift (Wallgreave *v.* Tebbs, 2; Kay & Johnson, 313). The grantee or devisee may claim under a deed or will duly executed, and if he was not privy to the writing containing the secret trust, he may insist on retaining the property devised for his own use, discharged of any obligation to apply it to any religious or charitable use or purpose (*ibid*). If the heir-at-law fail to prove such a trust or engagement by written document, or words, or tacit assent, or by the admission of the grantee or devisee, his bill of complaint will be dismissed with costs; but the heir-at-law may elect to take an issue, *devisavit vel non*, to which he is entitled (Payne *v.* Hall, 18 Vesey 475); but if the heir-at-law refuse such issue, the court will establish it against him (Jackson *v.* Barry, 2 Cox 225).

A gift by will or testament of land, or real property, or chattel real, or of any estate, term or interest, long or short, in such property, or of any rent, profit, or easement in or out of it, for a religious or charitable use, is null and void by the statute, which comprises all realty and every description of property that savours of realty. A bequest of leasehold land to a religious or charitable use is void, whether specific (Shanley *v.* Baker, 4 Vesey 732; Attorney-General *v.* Tomkins, Ambler 216; Attorney-General *v.* Tyndall, 2 Eden 207, S. C. Ambler 614; Hone *v.* Medcraft, 1 Brown Ch. Cases 261), or general by a residuary bequest (Attorney-General *v.* Graves, Ambler 155; White *v.* Evans, 4 Vesey 21; Pickering *v.* Lord Stamford, 2 Vesey Junior 272–581; Paice *v.* Archbishop of Canterbury, 14 Vesey 368; Johnstone *v.* Swann, 3 Maddox 467).

A gift by will or testament of money charged upon or payable out of land, or freehold or copyhold property, or chattel real is void, *ex gregibus* the proceeds from the sale of such property, Attorney-General *v.* Weymouth, Ambler 20, Brook *v.* Badley, L. R. 3 C. A. 672, Cadbury *v.* Smith, L. R. 9, Equity 37, Ashworth *v.* Munn, 14 L. J. Chancery 747; money due on mortgage, legal or equitable of or being a lien on such property, Attorney-General *v.* Meyrick, 2 Vesey 44, Attorney-General *v.* Caldwell, Ambler 635, White *v.* Evans, 4 Vesey, 21, Waterhouse *v.* Holmes, 2 Simons 162, Symons *v.* Marine Society, 2 Giffard 325; a judgment debt registered against the lands of the debtor, Colluson *v.* Pater, 2 Russell & Mylne 344, Shadbolt *v.* Thornton, 17 Simons 49; money due on the security of turnpike tolls, or of the poors or county rates, Knapp *v.* Williams, 4 Vesey 430 note, Finch *v.* Squire, 10 Vesey 41, Ion *v.* Ashton, 28 Beavan 379. Money secured by an assignment of the Birmingham Town Hall rates, raised under a local Act which authorized the levying of the rate on the occupiers of houses according to their rents or value, and gave a power of distress on the goods of persons not paying, is a charge affecting real estate, and incapable of being given by will for a religious or charitable use, Thornton *v.* Kempson, 1 Kay 592. The late Master of the Rolls (Jessel) decided that money secured by bond of the justices in quarter sessions assembled, and charged on the police rates of a division of the county, are pure personalty, and may be bequeathed to a charity, *re* Harris, Jacson *v.* Governors of Queen Anne's Bounty, 43 L. T. Rep. N. S. 116; 49 L. J. Chancery 687. V.-C. Bacon held in Jervis *v.* Lawrence, Chancery Division, November 25-28, 1882, that bonds of Commissioners of the Norland Estate, in Kensington, created under a private Act of

Parliament, and secured by rates chargeable on the owners and occupiers of every tenement, and leviable on their goods, if unpaid, by distress and sale thereof, did not give the holders thereof an interest affecting land within 9 Geo. II. c. 36, but are pure personalty, and were lawfully bequeathed by such holder among six charitable institutions (47 L. T. 428). A testator devised and bequeathed his moiety in a partnership (in addition to other property) to trustees in trust for sale to form an aggregate fund to be applied, after payment of legacies and annuities, for charitable purposes. The partnership property included real estate. It was holden that the residuary bequest for charitable purposes was void so far as it concerned the moneys arising from the sale of the testator's moiety of the partnership real estate (Ashworth *v.* Munn, 15 Chancery Division 363, 50 L. J. Chancery 107). A testator bequeathed a share of his residuary personal estate consisting of a legacy to him from a deceased testator payable from the proceeds of the latter's real and mixed and pure personal estate. It was held that the bequests to the charities must be apportioned according to the different descriptions of estate, and that the legacy failed as to the proportion of the real and mixed estate, but was valid to the extent of the pure personalty (*In re* Hill's Trusts, 16 Chancery Division 173, 50 L. J. Chancery 134). A testatrix bequeathed her residuary estate, which comprised both pure and impure personalty, to her executors and trustees, to give to the poor as they might think fit. Mr. Justice Kay held that the legacy must abate in the proportion which the impure personalty bore to the pure and impure personalty together. It could not be upholden on the ground that under the discretion clause the impure

personalty might be applied to charities exempt from the Mortmain Act—the testatrix not having indicated as objects of her bounty any of the classes of charities among which such exemptions were found (*re* Clark, Husband *v.* Martin, Chancery Division, March 3, 1885). A testatrix in sickness bequeathed a sum of money to trustees to establish a fever hospital. The money was invested in the names of the trustees, and they executed a deed declaring they held the money in trust for founding, after the donor's death, a fever hospital. The testatrix was ignorant of the deed, and died in a fortnight after giving the money. It was decided that the gift was within the prohibition of 9 Geo. II. c. 36, and void (Hawkins *v.* Allen, 10 L. R. Equity 246, 40 L. J. Chancery 23). A legacy towards building a church upon conditions as to it being commenced in the testator's lifetime or within two years afterwards, and in a certain locality, is void by the same Act (Pratt *v.* Harvey, 12 L. R. Equity 544). A gift to the Society for the Prevention of Cruelty to Animals, to be applied as the Committee should think best towards the establishment in the neighbourhood of London and Westminster of slaughter-houses away from the densely populated places in which they were then situated, and for the relief of and protection from cruelty to the animals to be slaughtered is void (Tatham *v.* Drummond, 4 De Gex, Jones & Smith 484). A bequest to a corporation of £3,000 consols, of which £1,000 was to be expended in erecting a dispensary, and the residue for an endowment for its maintenance was held void, though the Corporation already possessed land in mortmain upon which a dispensary might have been erected (*In re* Cox, Cox *v.* Davie, 7 Chancery Division 204, 47 L. J. Chancery 72). An Act of Parliament for improving a town and supplying

the inhabitants with water authorized the Commissioners thereunder to purchase land to construct and carry on gasworks and waterworks, and to defray the debt by rate leviable on the inhabitants and recoverable by distress. The Commissioners borrowed moneys and executed mortgages of the works, rents and rates to the lenders to secure repayment. It was held that the mortgages were an interest in land within 9 Geo. II. c. 36 (Chandler *v.* Howell, 4 Ch. D. 651; 46 L. J. Ch. 25). A bequest to a charity of 3½ per cent. consolidated stock in the Metropolitan Board of Works was declared void (Cluff *v.* Cluff, 2 Ch. D. 222); shares in the New River constitute real property (Davall *v.* New River Company, 3 De Gex & Smale 394); also, Bath Navigation shares (Howse *v.* Chapman, 4. Vesey 542); and a mortgage of borough rates (Thornton *v.* Kempson, 1 Kay 582).

V.-C. Malins held in Holdsworth *v.* Davenport, 3 Ch. D. 185, 46 L. J. Ch. 20, that the debentures of a waterworks company given in the form schedule C to the Companies Clauses Consolidation Act, 1845, by which the undertaking, including the town rates, was charged with the repayment of money borrowed, is not an interest in land within 9 Geo. II. c. 36. V.-C. Bacon in Mitchell *v.* Moberly, 6 Ch. D. 655, decided that a railway debenture given in the same form was pure personalty and bequeathable to a charity. The Lords Justices, on appeal from the judgment of V.-C. Hall, in Attree *v.* Hawe, 9 Ch.D. 337, 47 L. J. Ch. 863, held that debenture stock created under the Companies Clauses Act, 1863 (26 & 27 Vic. c. 118) part 3, does not confer on the holder thereof an interest in land within the meaning of 9 Geo. II. c. 36, and it may be inferred from the judgment of the Lords Justices that debentures and debenture stock were within the same

category in the sense of being the subject of charitable bequest. The Royal Society, which is a voluntary association of scientific men, founded by Bishop Wilkins in the reign of King Charles II. in 1732, purchased with moneys, the subscriptions of the members, real estate at Acton, and in 1881 they sold a part of it. Objection was taken by the purchaser that the consent of the Commissioners pursuant to the Charitable Trusts Acts, was necessary to convey a good title, on the ground that the society was an endowed charitable institution. It was held by V.-C. Hall that the estate having been purchased and paid for out of the voluntary contributions of members which they were legally empowered to do, the society was within the exemptions of the 62nd section of the Charitable Trusts Act, 1853, and the 48th section of the Act of 1855, and that the society had power to sell and convey the estate to the purchaser without the consent of the Commissioners (The Royal Society of London *v.* Thompson, 17 Ch. D. 407, 50 L. J. Ch. 344).

By an Act for the improvement of a suburban estate, Commissioners were empowered to make rates upon the occupiers of houses and lands in the limits, and to borrow money at interest, and assign the rates as security for its repayment. The Commissioners were authorized to recover any arrear of rates by action or distress and sale of the occupier's goods. By the Metropolis Local Management Act, 1855, the powers of the Commissioners were vested in the vestries of the parish, who were to pay over the moneys received by them to the Commissioners, and the overseers were vested with the same powers for its recovery as for levying rates for the relief of the poor. The vestry was also empowered to levy the rate directly on the occupier of a house or land in the parish making

default. The Act provided that, in case of non-payment of principal money or interest on any mortgage of the rates, the mortgagee could obtain a receiver. It was held by Vice-Chancellor Bacon that an assignment by way of mortgage of a proportion of the rates, to secure the repayment of a sum borrowed for the improvement of the estate, did not create an interest in land within the meaning of the Mortmain or Charitable Uses Act (Jervis *v.* Lawrence, 22 Chancery Division 202, 52 L. J., Chancery 242, 47 L. T. 428).

Money invested on mortgage debenture of lands of commissioners, for improving a city, or on river navigation shares, or on the right to lay mooring chains in the river Thames, are within the prohibition of 9 Geo. II. c. 36, Howse *v.* Chapman, 4 Vesey 542; Buckeridge *v.* Ingram, 4 Vesey Junior, 652; Negus *v.* Coulter, Ambler 367. A bequest of money charged on rates and tolls levied pursuant to an Act of Parliament for improving the navigation of a river, not therein declared to be considered personal estate, was holden to be an interest in land and void, Ion *v.* Ashton 28, Beavan 379, and the same interpretation was given of a mortgage of the works, rents, and rates, constructed and raised under a Towns General Improvement Act (Chandler *v.* Howell, *supra*).

A gift by will of money due on a policy of assurance, for a religious or charitable use, is valid, although the company's assets include real property, which would be liable to pay the sum insured (Marsh *v.* Attorney-General, 2 Johnson & Hemming, 61). Generally, shares in joint stock companies, including railway, gas, canal, dock, and mining companies, though part of their capital consist of land necessarily obtained for the purposes of their undertaking, whether the Act incorporating the company does

or does not declare that the shares therein are to be considered to be personal estate, are not interests in land within the prohibition of 9 Geo. II. c. 36, unless the share or interest bequeathed to the charity should, in the ordinary course of events, vest specifically in the holder thereof a portion of such land (Morris *v.* Glyn 27, Beavan 218; Myers *v.* Perigal, 2 De Gex, Macnaghten & Gordon 599; Edwards *v.* Hall, 11 Hare 13; Taylor *v.* Lindley, 2 De Gex, Fisher & Jones 599; Hayter *v.* Tucker, 4 Kay & Johnson 243; Entwistle *v.* Davies, L. R. 4 Equity 272; Hilton *v.* Girand, 1 De Gex & Smale 183; Sparling *v.* Barker, 9 Beavan 450; Thompson *v.* Thompson, 1 Collier 381).

A bequest to a charity of the unpaid purchase money due on the sale of land, (Harrison *v.* Harrison, 1 Russell & Mylne 71; Brook *v.* Badley, L. R. 3 C. A. 672; Cadbury *v.* Smith, L. R. 9 Equity 37), or of money owing on the sale of a growing crop of land, (Symons *v.* Marine Society, 2 Giffard 325), is void, because of an interest in land. So also is a bequest of the rent of land thereafter to accrue, but of rent in arrear is good (Edwards *v.* Hall, 11 Hare 13). A bequest to a charity of interest then owing on mortgage of land has been declared void (Alexander *v.* Brame, 17 Jurist, N. S.), and *à fortiori* would such bequest of the *future* interest be invalid.

A lady, long before her death, had granted a lease of a dwelling-house for thirty-one years at a small yearly rent, but reserving an immediate premium of £600 which she bequeathed to a charity. It was held that the unpaid premium was in the nature of purchase-money, and constituted a legal lien on the dwelling-house until paid, and could not be bequeathed to a charity (Shepheard *v.* Beetham, 6 Chancery Division 597, 46 L. J. Ch. 763). In

Baker *v.* Sutton, 1 Keen 224, the same doctrine was extended to a bequest of money to be invested on mortgage of land. A bequest to a charity of £100 owing to the testator from husband and wife, and secured by a mortgage of the wife's life interest, under a will in a sum of money, which was at the testator's death invested on mortgage of freehold property, and two sums of £800 and £200, due to the testator from a widow and her two daughters, and secured, the £800 by a mortgage of the widow's life interest and a daughter's remainder in settlement funds, and the £200 by mortgages of the wife's life interest and another daughter's remainder in the settlement funds, which, at the testator's death, were invested on mortgage of freehold property. Mr. Justice Pearson held that the £100 was pure personalty and the bequest of it good, but that the £800 and £200 were impure personalty, and the bequest of them to the charity was void (*re* Watts, Comford *v.* Elliott, 27 Chancery Division 318, 51 L. T. 85).

It has been held that the object of 9 Geo. II. c. 36, is to prevent the augmentation of the area or quantity of land in mortmain, and that a gift by will of money, to be applied wholly in erecting, enlarging, or improving a church, chapel, schoolhouse, hospital, or other such building, upon land already in mortmain, is valid (Harris *v.* Barnes, Ambler 650, Webley *v.* Dobson, 4 Russell 342, Glubb *v.* Attorney-General, Ambler 373, Attorney-General *v.* Bishop of Chester, 1 Brown 444; Foy *v.* Foy, 1 Cox 165; Attorney-General *v.* Munby, 1 Merivale 327; Attorney-General *v.* Parsons, 8 Vesey 186; Brodie *v.* Duke of Chandos, 1 Brown C. C. 444; Ingleby *v.* Dobson, 4 Russel 342; Dixon *v.* Buller, 3 Young & Collyer 677). But if the testator make such a gift or bequest he

must express his intention to that effect, and directly or indirectly specify or indicate the land already in mortmain upon which the bequest is to be expended (Giblett *v.* Hobson, 5 Simons 651, 3 Mylne & Keene 517; Attorney-General *v.* Hyde, 2 Ambler 750; Pritchard *v.* Arbouin, 3 Russell C. C. 456; Attorney-General *v.* Davies, 9 Vesey 535; Attorney-General *v.* Nash, 3 Brown C. C. 526; Attorney-General *v.* Hodgson, 15 Simons 146; Cox *v.* Davie, 7 Chancery 204; Trye *v.* The Corporation of Gloucester, 14 Beavan 173; Attorney-General *v.* Hull, 9 Hare 647). The testator must at any rate expressly exclude the application of his bequest in the purchase of land or other real property or chattel real (Pratt *v.* Harvey, L. R. 12 Equity 544). A bequest for the maintenance or endowment of churches, chapels, schools, hospitals, or other charitable institutions, already legally vested in mortmain, is valid (Edwards *v.* Hall, 13 De Gex, Macnaghten & Gordon 599).

A bequest to trustees of a charity leaving it to their discretion or option to invest the money in land or real property is valid; thus, in Gwinett *v.* Taylor, Ambler 210, a testator bequeathed money to a charity directing it to be invested in the public funds till the whole could be laid out in the purchase of land to the trustees' satisfaction, the bequest was upholden. A testator bequeathed money to be invested in the public funds and directed the dividends to be applied in providing a schoolhouse. The bequest was declared valid, because a schoolhouse might be rented or hired, and not necessarily purchased (Johnson *v.* Swann, 3 Maddox 451; *In re* Hedgman, Morley *v.* Croxon, 8 Chancery Division 156; *In re* Holburne, Chitty, J., May 22, 1885). A testator, by his will in 1870, bequeathed £800 to the rector of a parish for

the time being, the interest thereof to be paid from time to time to the trustees for the time being of a specified mechanics' institution, to be applied as they should think most advantageous for the instruction and benefit of the members; V.-C. Bacon decided that the bequest was void as tending to a perpetuity (*In re* Sheraton's Trusts, Chancery Division, July 19, 1884). But a bequest of stock in the funds for the establishment of a charity is void, as it would involve the purchase of land (*In re* Clancy, 16 Beavan 295, Dent *v.* Allcroft, 31 L. J. Chancery 211; Crafton *v.* Frith, 4 De Gex *v.* Smale, 238). So is a bequest of £200 "to aid of deaf and dumb to found a chapel for them" (Hopkins *v.* Phillips, 30 L. J. Chancery, 41). The like of a bequest to a society not holding lands in mortmain, on condition that it would furnish lands for the charitable purpose contemplated (Attorney-General *v.* Davies, 9 Vesey 535; Kirkbank *v.* Hudson, 7 Price 212; Baker *v.* Sutton, 1 Keen 224; Mann *v.* Burlingham. 1 Keen 235; Mather *v.* Scott, 2 Keen 172). A testator bequeathed a sum of money to trustees upon trust to invest it in real securities with liberty to vary the same for investments of a similar description, and to pay the interest to certain persons for life, and after their deaths to pay and transfer the trust moneys to the treasurer of a charity. The Life Beneficiaries having died, it was contended, on behalf of the charity, that there was no direction for the trustees to hold the investment for the charity, but to supply the beneficiaries an income during their lives, and that the investment clause was not imperative on the trustees. Mr. Justice Chitty held that the gift to the charity was void by 9 Geo. II. c. 36, as if the testator had given it a mortgage of real estate, that there was nothing to show the trustees

had the option (as in Graham *v.* Paternoster, 21 Bevan 30) to invest the money in personal securities. Lord Langdale's decision in Baker *v.* Sutton, 1 Keene 224, followed, *re* Birkley's estate, MacInnes *v.* London Maritime Institution, Chancery Division, Feb. 27, 1885. It will have been observed that in the last cases the court considered the direction of the testator to invest the bequests in real estate to have been imperative. Where a testator directed his charity legacies to be paid out of his pure personalty, the specialty creditors, who would have exhausted the personal estate, were ordered to be paid out of the realty (Attorney-General *v.* Lord Mountmorris, 1 Dicken 379). A testator gave the residue of his real and personal estate to trustees, upon trust to sell and convert the same into money, and thereout to pay his debts, &c., and to divide the net surplus equally between St. Thomas Hospital, St. George's Hospital, Westminster Hospital, and Charing Cross Hospital, and declared that his pure personal estate should, in the first place, be applied in payment of the shares of St. Thomas's Hospital and Charing Cross Hospital. Mr. Justice Chitty held that the pure personalty should be paid to the charities, and the debts, &c., be paid out of the impure personalty, and the assets were marshalled accordingly (*re* Pitt, Lacy *v.* Stone, Ch. D., March 12, 1885). A testatrix, by her will, devised certain real estate to executors, upon trust, to sell, and out of the proceeds to pay her funeral and testamentary expenses, debts, legacies, and duties thereon. She then directed the sale of ground rents derived from leasehold houses, the proceeds of which were to be applied in aid of the real estate to make such payments. The testatrix then bequeathed all her personal estate to the executors upon trust, after payment of expenses to pay the residue to a charity. The

estate consisted of realty £478, ground rents £89, impure personalty £700, and pure personalty £1,643. There were no next of kin. It was argued before V.-C. Bacon, on behalf of the charity, that the impure personalty was the primary fund for payment of the debts, legacies, &c. For the Crown it was contended that the real estate was primarily liable, then the leaseholds, and that if the personalty was liable at all, the debts and legacies were a charge upon the whole of it, and that therefore the impure personalty was only liable to satisfy the same in the proportion which it bore to the pure personalty. The Vice-Chancellor held that the impure personalty, which could not be lawfully given to the charity, must be first resorted to for payment of the debts, legacies, &c., and next the realty (Kilford *v.* Blayney, Ch. D., March 28, 1885). A covenant for payment of money to a charity, which can only be satisfied out of land or impure personalty, cannot be legally enforced (Jeffries *v.* Alexander, 8 H. L. C. 594; Fox *v.* Lowndes, L. R. 9 Equity 453). 42 Geo. II. c. 16 validates bequests for redeeming *land tax* chargeable on land belonging to charitable institutions.

The institutions next hereinafter named are by several statutes exempted from the operation of the different Acts preventing or restraining the grant or gift by deed or will of land or other realty to religious or charitable uses:—

1. The British Museum. 5 Geo. IV. c. 39, s. 3.

2. The Universities of Oxford and Cambridge, and the Colleges of Eton, Winchester, and Westminster, 9 Geo. II. c. 36, s. 4. Sec. 5 enacts that no such college or house of learning which doth or shall hold or enjoy so many advowsons of ecclesiastical benefices as were or should be

equal in number to one moiety of the Fellows, or persons usually styled or reputed as Fellows, or where there shall be none such, to one moiety of the students upon the foundation, according to the constitution thereof, should, after the 24th June, 1736, be capable of purchasing, acquiring, receiving, taking, holding, or enjoying any other advowsons of ecclesiastical benefices; the advowsons belonging to the heads of the colleges or houses of learning not to be computed in the restriction thereby made; but 43 Geo. III. c. 101, repeals s. 5 of the Act last before-mentioned, and removes the limitation thereby imposed on advowsons of colleges or houses of learning.

3. Queen Anne's Bounty, 43 Geo. III. c. 107.

4. The Foundling Hospital, 17 Geo. II. c. 29.

5. Greenwich Hospital, 10 Geo. IV. c. 25.

6. St. George's Hospital, 2 Will. IV. c. 38.

7. The Bath Infirmary, 19 Geo. III. c. 23, *vide* Maggs *v.* Hodges, 2 Vesey 52.

8. The Westminster Hospital, 6 Geo. IV. c. 20.

9. The Royal Naval Asylum, 51 Geo. III. c. 105.

10. Seamen's Hospital Society, 3 & 4 Will. IV. c. 9.

11. County Lunatic Asylums, 9 Geo. IV. c. 40, s. 25.

12. Poor's Houses (Union Workhouses), 4 & 5 Will. IV. c. 76, s. 21.

13. For the augmentation of small livings, 17 Chas. II. c. 3, s. 7; 6 & 7 Vic, c. 37, s. 22.

14. Parsonage Houses, 17 Geo. III. c. 53. s. 10; 55 Geo. III. c. 147, s. 12; 7 Geo. IV. c. 66, s. 1.

15. Erection of New Churches, 43 Geo. III. c. 108; 51 Geo. III. c. 115; 58 Geo. III. c. 45; 5 Geo. IV. c. 103, s. 14.

16. The Corporation of the Bedford Level, 15 Chas. II. c. 17.

17. The Governor and Company of the Bank of England, 5 & 6 Will. & Mary, c. 20, s. 20.

18. The Governor and Company of the Royal Exchange Assurance, 6 Geo. I. c. 18; 11 Geo. IV.; 1 Will. IV. c. 74.

19. The London Assurance, *ibid.*

20. The London and Southampton Railway Company, 4 & 5 Will. IV. c. 88.

CHAPTER III.

THE LAW CONCERNING MINISTERS OF RELIGION.

THE rector or vicar of a parish has a freehold estate during his life in the church, churchyard, rectory or vicarage, glebe and tithes of his incumbency. The minister or pastor of a Dissenting Church or congregation holds his office at their will, in the absence of a special contract, the terms of which would govern his tenure of office. The trustees in whom the legal estate was vested placed a minister, elected by a congregation of Nonconformists, into possession of the chapel and dwelling-house appurtenant thereto. The minister was engaged by the congregation at an annual salary. The congregation, being dissatisfied with some of the minister's doctrines, resolved at a meeting to remove him. The trustees thereupon demanded possession of the chapel and dwelling-house, and, on refusal, served the minister with a declaration of ejectment. At the trial of the action, the minister—the defendant—contended that he was entitled to reasonable notice before he could be ejected from possession. The court held that the defendant was tenant at will, which was determined by his removal and the demand of possession (Doe *d.* Nicholl *v.* MacKeagh, 10 Barnewell & Cresswell 721). In 1783, a chapel or meeting-house was conveyed to trustees, to the intent that it should be used for public religious worship by the society of Protestant Dissenters called Presbyterians. The congre-

gation, according to their custom, elected the defendant their minister to officiate in the chapel or meeting-house of which he was put in possession, together with a dwelling-house appertaining thereto, and he so continued for sixteen years. In 1828 the congregation at a meeting resolved by a large majority to remove the defendant, their minister, and possession of the chapel and dwelling-house was thereupon demanded of him by the authority of the trustees. On the minister's refusal, an action of ejectment was brought against him in the name of the heir at law of the surviving trustee to recover possession of the chapel and dwelling-house. The court decided that the defendant held the chapel and appurtenant dwelling-house by the will of the congregation, which had been determined by his dismissal and the demand of possession, and the plaintiff was entitled to recover (Doe *d.* Jones *v.* Jones, 10 Barnewell & Cresswell 718). The district committee of Wesleyan Methodists have power, according to the rules of the body or society, to suspend a minister from his office (Warren *v.* Newton, Chancery 25, March, 1835; *vide* "Warren's Chronicles of Methodism").

Where a part only of the trustees of a Dissenting chapel appointed the minister to officiate in it, the latter cannot maintain an action to recover his salary from the remaining trustees, although they might have joined with the others in signing a notice to the minister demanding posssession of the chapel) Cooper *v.* Whitehouse, 3 Carrington & Payne 545). The trustees of a Dissenting chapel, where the congregation had dispersed for want of a pastor, engaged a minister for a year at a salary. The latter inserted in the newspapers a notice of the reopening of the chapel on a certain day, and then announced to the congregation there assembled that they

should at the close of the service proceed to elect a pastor, and they thereupon appointed him. After the expiration of the year the trustees of the chapel ejected the minister, who applied for a mandamus to be restored, contending that by virtue of the election he was entitled to his office and possession of the chapel during his life. The court refused to grant the writ, stating its opinion that if there was a competent body to elect him minister, sufficient and proper notice prior to the election had not been given (Rex *v.* Dagger Lane Chapel, 2 Smith 20). Where a majority of the congregation had expelled the minister of an endowed Dissenting chapel, who applied for a mandamus to restore him and give him an opportunity to justify his conduct, the court rejected the application, because it did not appear that he had complied with all the conditions necessary to give him a *primâ facie* title. The delivery of the key of a chapel to the plaintiff to enable him to preach in it, which had been conveyed by him to the defendant by a deed the validity of which was in dispute, was held not sufficient possession by the plaintiff to enable him to maintain trespass against the defendant, for having forcibly dispossessed the plaintiff of the chapel after he had refused to deliver the key (Revett *v.* Brown, 5 Bingham 7; 2 Moore & Payne, 12). By the terms of a trust deed of a Baptist congregation, the church could remove the minister by resolution or order made and declared at a meeting of members who had been communicants for the preceding six months, of which notice should have been given as therein mentioned, and confirmed and approved at a second meeting similarly convened. Disputes having arisen between the Church and minister, notice was on a Sunday given of a meeting on the Saturday following to prefer and decide on charges

against the minister, with a view to his dismissal, but no particular accusation was specified. The meeting was held, and a resolution to dismiss the minister was adopted. On the following Sunday a second notice was given of a second meeting on the following Saturday, to confirm the resolution passed at the previous meeting, but the same was not specified. The second meeting was held, and the resolution of the first meeting was ratified. The court decided that the second notice was invalid, because it did not specify the resolution which was to be confirmed, and that the resolution passed at the second meeting was invalid; held, also, that the omission to specify the charges which were to be preferred against the minister at the first meeting rendered the resolution then passed invalid (Dean *v.* Bennett, 6 L. R. Chancery 489; 40 L. J. Chancery 452). The Ramsden Street, Huddersfield, Congregational Chapel case, Jones *v.* Stannard, heard before Vice-Chancellor Sir Charles Hall, in January and February, 1881, attracted much interest and attention among Nonconformists of every denomination. The action had its origin in differences between the Low Church and Broad Church parties in the congregation of Protestant Dissenters of the Congregational denomination, otherwise called Independents, being Pædo-Baptists. The hearing occupied seven days. The facts were as follows:—The plaintiffs were eleven of the trustees of the chapel, representing the Low Church, or, as they maintained, the orthodox party, holding the doctrines of Calvin; the defendants were the Reverend John Turner Stannard, the minister or pastor of the chapel, and the ten remaining trustees; and the object of the action was to obtain a declaration that Mr. Stannard was not qualified for or competent to exercise the office of pastor, or to officiate at the chapel, and

to obtain an injunction to restrain him from so doing, with a declaration that the appointment of four of the defendants as trustees was invalid. It appeared that the affairs of the chapel were regulated by a trust deed, dated March 27th, 1849, which, among other things, provided that the trustees should permit such persons only to be pastors of the chapel as, being of the denomination aforesaid, should hold and maintain the doctrines specified in the schedule to the deed. This schedule contained the ten following articles:—1. The Divine inspiration of the Holy Scriptures, and their sole authority and entire sufficiency as the rule of faith and practice. 2. The unity of God, with the proper deity of the Father, of the Word, and the Holy Spirit. 3. The universal and total depravity of man, and his exposure to the anger of God on account of his sins. 4. The sufficiency of the atonement which was made for sin by our Lord Jesus Christ, and His ability and willingness to save all who come to Him for salvation. 5. Free justification by faith, and by faith alone, in the Lord Jesus Christ. 6. The necessity of the Holy Spirit's influence in the work of regeneration, and also in the work of sanctification. 7. The predestination, according to God's gracious purpose, of a multitude, which no man can number, into eternal salvation by Jesus Christ. 8. The immutable obligation of the moral law as the rule of human conduct. 9. The resurrection of the dead, both just and unjust. 10. The eternal happiness of the righteous, and the everlasting punishment of the wicked.

The principal ground of the plaintiff's case was that the tone and character of Mr. Stannard's public teaching from the pulpit were not in harmony with this doctrinal standard, and side issues were raised with reference to the formality and regularity of Mr. Stannard's election, and

also (as appeared) as to the validity of the appointment of four of the defendants as trustees. The circumstances with regard to these side issues did not, however, having regard to the manner in which the case was dealt with by the Vice-Chancellor, call for a report. Up to the year 1873 the Rev. Mr. Skinner had been minister of the chapel, and in that year Mr. Stannard, who was then a student at the Independent College, Spring Hill, Birmingham, was appointed assistant minister to Mr. Skinner, with the understanding that if he gave satisfaction the question of his becoming co-pastor should be considered. This question was considered about a year afterwards, when Mr. Stannard, in January, 1875, wrote a letter to the trustees expressing his willingness, in the event of his being chosen co-pastor, to comply with the terms of the trust deed, understanding by such compliance in the matter of the doctrines given in the schedule, adhesion to their evident scriptural facts and spirit more than to their precise wording in every particular case. This letter led to a request from the trustees that Mr. Stannard would state in writing his belief or otherwise in each of the ten doctrines specified in the schedule, and Mr. Stannard accordingly wrote a second letter on January 18, 1875, in which he gave an unqualified assent to all the doctrines of the schedule, except the 3rd, 7th, and 10th, as to which he wrote as follows:—"Concerning the third, I object to the wording employed, *i.e.*, universal total depravity of man. I, of course, believe in the universal sinfulness of man, and his incurring the Divine displeasure on that account, but the whole compass and tone of Scripture lead me to see that we can only rightly apply the term 'totally depraved' to that man who has become, as Paul says, 'past feeling,' or who, worse, has been guilty of what the

Saviour speaks of as the unpardonable sin against the Holy Ghost. That touching the seventh, I do not feel it scriptural to think or speak of predestination in any sense which supposes favouritism or arbitrary choice on God's part; that while that which we understand by predestination has reference to God's knowledge, it must at the same time, from what we know of His character in Jesus Christ, have relation to something in man rather than difference of disposition in God, or unfairness of treatment by Him, that in effect, and as the gist of scriptural truth on the subject, the elect are (as One has said) 'whosoever will,' and the non-elect 'whosoever won't.' That with reference to the tenth and last clause, I believe most decidedly in punishment as being required and proved by reason, Scripture, science, and experience; that I believe the whole substance and spirit of Christ's message to be strongly opposed to the physical and material terms in which the doctrine of everlasting punishment is often popularly expressed; that this subject should be set forth in a manner suitable to its moral and spiritual ideas and principles. That concerning the issue of punishment, this I leave in God's hands, feeling that He alone knows what it will be, and he assuredly will do nothing but what is right and best for His kingdom at large, as well as for each human soul."

This letter was accepted by the trustees as complying with the requirements of the trust deed (although the plaintiffs now stated that they were advised that the trustees had no power to dispense with an unqualified acceptance of its doctrines). Mr. Stannard was appointed co-pastor on January 25, 1875. His teaching, however, became, as the plaintiffs alleged, still further at variance with true Calvinistic doctrine, and in particular as to the

3rd, 7th, and 10th doctrines, and when Mr. Skinner retired from the pastorate in April, 1877, Mr. Stannard failed to secure the requisite vote of two-thirds of the members of the chapel—the numbers being 233 in favour of, and 121 against his appointment. For the peace of the church, however, he was from time to time appointed to officiate as pastor on the footing of the pastorate being vacant, until the month of January, 1880, when the strength of the two parties in the chapel having become somewhat altered, he secured the requisite majority, and was elected sole pastor by 184 votes to 69. After his election, and in compliance with the trust deed, he wrote to the trustees a letter, dated February 20th, 1880, in which he declared that he would hold and maintain the doctrines specified in the schedule, and that he accepted the pastorate subject to and as being bound by the deed, and, he added: "In making this declaration, however, I claim the same liberty in the interpretation of the said doctrines as is usually allowed in the churches of our order, and which was indicated in my letter to you, dated the 8th day of January, 1876, accepted by you as complying with the requirements of the trust deed."

Mr. Stannard's case was that he had never acted or desired to act otherwise than in harmony with the spirit and legitimate province of the trust deed, that it was not the practice in congregations of this denomination to require from their pastors an absolutely rigid adherence to the letter of the doctrinal parts of their trust deed when their teaching was in accordance with its spirit, and that his theology was sound in accordance with that of many eminent divines of the Congregationalist body, which, by its declaration of faith, expressly reserved to every Congregational minister who upheld evangelical religion

the most perfect liberty of conscience, that he had the support of the large majority of the church, and still larger majority of the seatholders, and that the issue between himself and his opponents was practically embodied in the question—should the living Christ rule his own Church, or should the dead man's hand? It will be seen that the questions in the case were of a character somewhat unusual in modern days, at all events in a Court of Chancery, and there was a great mass of evidence on either side, upon the various questions at issue, and many eminent Congregational divines, doctors of divinity, and professors, gave evidence in the character of theological experts, some of them being cross-examined in court. The case was argued by Mr. Graham Hastings, Q.C., and Mr. W. Barber for the plaintiffs, and by Mr. William Pearson, Q.C., and Mr. Cozens Hardy for the defendants. At the conclusion of Mr. W. Pearson's speech for the defence, and without calling on Mr. Graham Hastings to reply, his lordship delivered a long and elaborate judgment. The Vice-Chancellor, after referring to the judgment of Lord Cranworth in the case Attorney-General *v.* Clapham (4 De Gex, M. & G 591), said he must consider—

"That the trust deed contained within itself the whole materials on which he could ground his judgment, and the whole regulations which governed this religious association; that the schedule to the trust deed contained an exhaustive specification of the creed or faith which was accepted by them, and that from that alone he must take that creed. He found nothing in the deed which qualified the schedule, and he could not incorporate into it the regulations of the Congregational Union, or of any other association. Indeed, it was manifest that there were differences between the opinions of the several congregations of this denomination and their several trust deeds. His lordship then referred to the facts of the case, and, commenting minutely upon the letter of January, 1875, stated his opinion that that letter was not only not such an expression of

adhesion to the faith contained in the schedule to the trust deed as that deed required, but also showed clearly that Mr. Stannard entertained doctrinal opinions differing, and that materially, from the schedule upon the three Articles of Faith, numbered 3, 7, and 10, relating to the universal depravity of man and the doctrines of predestination and eternal punishment. With regard to the third article, his lordship could not reconcile with it the explanation given with great astuteness by Mr. Stannard in his letter or statement of belief. That explanation seemed to him to amount to this, that there were only some persons who could be called totally depraved, either as being past feeling, or as having committed what he speaks of as the unpardonable sin against the Holy Ghost—that was to say, that a class of man, not the whole family of man, was totally depraved, and that was not a description of the universal and total depravity of man. It seemed to him, upon a fair interpretation of that passage, that it showed an evident dislike and avoidance of and repugnance to the doctrine of total depravity. Then, as to the doctrine of predestination, there was a very long explanation, which he summed up by saying, 'As the gist of scriptural truth on the subject, the elect are (as One has said) "Whosoever will," and the non-elect, "whosoever wont."' His lordship could not find in that anything like an adhesion to the doctrine of 'The predestination, according to God's gracious purpose, of a multitude which no man can number unto eternal salvation by Jesus Christ.' The two seemed to him to be entirely different. The next article in question was one as to which there had no doubt been much discussion, not only among the Independents, but among other classes of Christians, including the English Church, in reference to the meaning of the word 'everlasting.' His lordship then read the explanation of Mr. Stannard, and stated that, so far as he could understand, it amounted to this: I believe in the necessity and existence of punishment, but I cannot sign anything which uses the word 'everlasting' with reference to the issue of that punishment; I leave that in God's hands.' That did not seem to him to be an adhesion to the tenth article. His lordship next referred to the letter of February, 1880, and stated that, even if the letter had stopped at the end of the first clause, it might have been open to question whether, having regard to the first letter, the trustees could have treated it as a sufficient acceptance within the meaning of the trust deed; but on looking to the whole of it, he could not doubt that the real effect and intent of that letter were that Mr. Stannard did not withdraw, but, on the contrary, still adhered to the doctrines expressed in his first letter. There was no ground for any imputation of breach of good faith against Mr. Stannard, who

was a young man of great promise when he first became connected with this Church, and had since become a man of distinction, and his lordship had no doubt that he had convinced himself that his letter was a substantial compliance with the deed. It was not necessary in the view which his lordship took of the case, to go in detail into the evidence, nor to express any opinion as to the very learned arguments which had been addressed to him as to the admissibility or non-admissibility of the evidence of experts upon matters of general doctrine—far be it from him to express any opinion that their evidence was inadmissible, and, at all events, some of those witnesses had been cross-examined. However, notwithstanding the learned divines who had given testimony on the other side, his lordship considered that on the whole the evidence for the plaintiffs was the reliable evidence. Without, therefore, treating the action as a penal action, the court must put a construction upon the trust deed, and upon the first part of the case there must be judgment for the plaintiffs."

The principles of the judgment of Vice-Chancellor Hall in the last case were confirmed by Mr. Justice Pearson, in the recent action of Dandy *v.* Lamport, reported in the "Times" for August 2nd, 1884, as follows:—

"This was a motion on behalf of the trustees of a religious community at Spalding, calling themselves 'The Free Church of England,' for an injunction to restrain Mr. Lamport, the minister of the church, from continuing to act as such minister, and from conducting the religious services therein, and from continuing in possession of or using the church and schoolroom, and from preventing the defendant from occupying the premises. The defendant was elected minister of this congregation in the year 1881, and differences having arisen between him and some of the members of the congregation, steps were taken in conformity with the rules and regulations of the community for bringing the matter before Convocation. It appeared that a deed poll was executed in 1863, which formed the basis of the doctrines and tenets to be professed by the

members of the 'Free Church of England,' and by the 12th section it was provided that the annual assembly or convocation should be at liberty to make such orders and regulations as they should think fit, and that the appointment of the minister should rest with them, and further that any minister so appointed, if accused of any act opposed to the ordinances of the community, should be cited before the convocation, and they should have power to expel him. The proper forms pointed out by these regulations were complied with, and the defendant was dismissed from his position of minister of the church, on grounds connected with the doctrines taught by him, but he had refused to acknowledge the authority of the convocation, and had still continued in possession of the church and school.

"Mr. Higgins, Q.C., and Mr. Dryden appeared in support of the motion.

"Mr. Lamport, the defendant, appeared in person, and entered into various matters connected with the conduct of the plaintiffs towards him, but he complained more particularly of the violent behaviour of Mr. Dandy, attributing to him the unjust opposition to which he had been exposed. He asserted that the doctrines taught by him were in perfect conformity with the principles laid down in the canons of the 'Free Church,' and that he had never experienced any opposition from any other members of the congregation besides Mr. Dandy, and had never had the least disagreement with any one else. He had given up a more lucrative appointment at the urgent request of members of this congregation, and if he were now dismissed he should not know how to earn his living.

"Mr. Justice Pearson said it was not in his power to enter into any matters connected with the dismissal of

Mr. Lamport, except to see whether the regulations prescribed by the deed poll had been legally complied with. He had allowed the defendant to go into matters of detail which were irrelevant to the question now before the court, on the ground that he was defending himself without the assistance of counsel. All his lordship could now do was to decide upon the evidence whether the acts complained of by the defendant were in strict conformity with the deed. It was clearly laid down by the deed and by the canons forming part of that deed, that if any charges were brought against the minister, they must be submitted in writing to the 'discipline convocation,' who had power to summon the minister complained of before them, and to decide whether the charges were proved. This course was adopted, and it did not appear that Mr. Lamport was deprived of any opportunity of producing evidence or defending himself in any manner he thought fit. The convocation having taken the matter into consideration, came to the conclusion that the charges were proved, and that Mr. Lamport must be dismissed. The defendant had then, by the same canons, the right to appeal to another convocation within ten days, but he allowed the time to pass without making any appeal. It was a mistake of the defendant to suppose that he had any interest in the freehold of the church. He must be confounding his present position, with the position he might have occupied as a minister of the Church of England. Having accepted his appointment subject to the rules and regulations of the 'Free Church,' he must submit to those rules, and he must submit to those persons who had authority over him. His lordship was therefore bound to restrain the defendant from continuing in possession of the buildings, and from performing the religious services of the church,

and the keys of the church and school must be given up to the plaintiffs."

We have seen (*ante*, p. 36) that by the statute 23 & 24 Vic. c. 32, s. 2, any person who should molest, let, disturb, vex, or trouble, or by any other unlawful means, disquiet or misuse any preacher duly authorized to preach in any cathedral, church, parish, or district church or chapel of the Church of England, or in any place of worship duly certified under 18 & 19 Vic. c. 81, whether during the celebration of Divine service or at any other time, or in any churchyard or burial-ground, or any clergyman in holy orders ministering or celebrating any sacrament or any Divine service, rite, or office, in any cathedral, church, or chapel, or in any churchyard or burial-ground, should be liable on conviction to a penalty not exceeding £5, or at the discretion of the justices to imprisonment for not more than two calendar months.

For the further protection of ministers of religion, the statute 24 & 25 Vic. c. 100, s. 36, enacted that whosoever should by threat or force obstruct or prevent any clergyman or other minister in or from celebrating Divine service or otherwise officiating in any church, chapel, meeting-house, or other place of Divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial-place, or who should strike or offer any violence to, or should upon any civil process, or under the pretence of executing any civil process, arrest any clergyman or other minister who should be engaged in, or to the knowledge of the offender should be going to perform the same or returning from the performance thereof, should be guilty of a misdemeanour and being convicted thereof, should be liable at the discretion of the court of assize or general quarter

sessions of the peace, to be imprisoned for any term not exceeding two years, with or without hard labour, and in addition to or in lieu of the same should fine the offender and require him to enter into recognizances with or without sureties for keeping the peace and being of good behaviour for not exceeding one year.

CHAPTER IV.

THE LAW CONCERNING TRUSTEES OF CHARITABLE USES.

We have seen that the trustees of a charity cannot divert it from its uses declared by the founder, or inferred from his position and circumstances, and the law of the land existing at its foundation; and if they should deviate or misapply the building or funds, a Court of Equity would remove the trustees, and restore the charity to its normal condition and objects (Attorney-General *v.* Pearson, Attorney-General *v.* Shore and others, *ante; see* also, Foley *v.* Wontner, 2 Jacob & Walker, 247; Craigdallie *v.* Aikman, 1 Dowling, P. C. 1).

It is usual in trust deeds to insert a power for the appointment of new trustees, in the event of the incapacity or refusal to act of the original trustees, or their death or residence out of the kingdom, which is vested in the surviving trustees or trustee. A testator devised a sum of money and an annual rent-charge to six trustees, who had the right to nominate the minister for whose maintenance the endowment was made, and directed that when the trustees should be reduced to three, the survivors should choose three new ones. The trustees except one having died, the surviving trustee appointed five new trustees, and conveyed the property to them jointly with himself. It was contended at the hearing of a suit involving the question of the validity of the appointment, that the old trustees having been reduced below three,

the number specified by the testator for the exercise of the power, the right had lapsed. The court held that the direction was not imperative, and that the surviving trustee had a better right than any other person or authority to appoint the five new trustees, and upheld the appointment and conveyance (Attorney-General *v.* Floyer 2, Vernon 748). A dissenting chapel was conveyed to twenty-five trustees, and it was provided that as soon as they should, by death or other circumstances, be reduced to fifteen, the survivors, or the majority of them, should elect new trustees, so as to have a complement of twenty-five, in whom the chapel was to be vested. A majority of seventeen surviving trustees elected eight to fill the place of that number who had died. On the trial of an action of ejectment, involving the validity of the appointment, Lord Chief Baron Eyre was of opinion that the trustees had not exceeded their power in making the appointment, because the general intention of the trust-deed was that the complement of twenty-five trustees should be preserved by successive appointments, and though the period when the trustees should be reduced to fifteen was that at which the survivors were compellable to fill the vacancies, they *might* do so sooner if they thought fit) Doe *d.* Dupleix *v.* Roe, 1 Anstruther's Reports 86). The founders of a school directed that so often as the trustees should, by death or otherwise, be reduced to two, they should nominate new ones, being inhabitants of the parish where the school was situate, to complete the original number of trustees. The two surviving trustees appointed new trustees, not being inhabitants of the parish. On an information for the removal of the new trustees, Lord Thurlow upheld the appointment, because proper persons for the office might not be found

within the parish, and no evidence was offered to show there were, nor any impeaching the fitness of the non-residents who were appointed (Attorney-General *v.* Cowper, 1 Brown, Chancery Cases 439). When the deed provided that the heir for the time being of the founder should nominate the trustees of the charity, Lord Redesdale held the court had no power to supersede that direction, and, in the absence of the heir, to make an appointment on petition, pursuant to 52 Geo. III. c. 101 (Corporation of Ludlow *v.* Greenhouse, 1 Bligh, N. S. 80). An Act of Parliament for the relief of the poor of a parish provided that the vicar, churchwardens, and overseers for the time being, and certain other named persons, should be trustees for carrying the Act into execution, under which a meeting was held every third year to elect new trustees in lieu of those who had died or become disqualified, to maintain the number of 51 trustees, in addition to the vicar, churchwardens, and overseers. One of the 51 trustees having been appointed churchwarden, it was held that he did not thereby forfeit his previous office of trustee, (Corporation of Ludlow *v.* Greenhouse, 1 Bligh N. S. 80, 81). A trust to apply funds towards the repair of the church, payment of the fifteenths, and relief of the poor of the parish, buying of armour, setting forth soldiers, and repairing a bridge within the parish, is of a public nature, and acts done in execution of their duties by a majority of the trustees assembled for the purpose, is valid (Wilkinson *v.* Malin, 2 Crompton & Jervis 636; 2 Tyrwhitt's Reports 544).

Gross misconduct, misapplication of the revenues, and inability to account for and pay over the income of a charity, are sufficient grounds for transferring an estate vested in a corporation as trustees for a charity to other

persons more able and willing to perform the trust faithfully (Mayor of Coventry *v.* Attorney-General, 7 Brown's Chancery Cases 235). Trustees in whom was vested the right of nominating the preacher of a parish were held to have committed a breach of trust by assigning it to another person. A yearly rent-charge of £50 was vested in trustees to be paid to the preacher nominated by them. The representative of the surviving trustee assigned the right of nominating the preacher to a third person, who had purchased the property out of which the annuity was payable. It was held that the right of nominating the preacher was vested absolutely in the trustees, and that the assignment thereof was a breach of trust (Foley *v.* Attorney-General, 7 Brown's P. C. 249). Trustees misapplying the funds of a charity may be removed from their office at the instance of a co-trustee who dissented from the breach of trust. (*In re* Chertsey Market, 6 Price 279). It is a breach of trust for the maintenance of a chapel to pull it down and sell the materials, and let the site thereof for building houses (*ex parte* Greenhouse, 1 Maddox 92. But trustees may make an inconsiderable deviation from the terms of the trust if its substantial object be preserved. Lands were vested in trustees to lay out the rents for the use of a parish church and a chapel of ease, and in repairing the same. The trustees by direction of the inhabitants in vestry assembled, pulled down the old chapel and bought a plot of land to build thereon a new chapel out of the charity fund. The court justified the action of the trustees, but prohibited their applying the future rents of the charity land to pay any debt contracted in the rebuilding of the chapel and from raising the money on mortgage (Attorney-General *v.* Foyster, 1 Anstruther 116). In like manner the trustees of

a market-house were held justified in pulling it down when it had become a nuisance to the town from its obstructive and inconvenient position and its dilapidated condition, and in erecting a new market-house on another more eligible and commodious site in the town. *In re* Chertsey Market, 6 Price 261).

In many cases arising from the death, incapacity, or removal out of the kingdom of trustees of charitable uses and other circumstances, it was difficult, and in some instances impossible, to ascertain the person or persons in whom the power to appoint new trustees remained, or in whom the trust property was vested, necessitating application to a Court of Equity for its opinion on the subject, and its direction and order for the fresh appointment and conveyance. To remedy this state of things, the statute called Sir Morton Peto's Act was passed in 1850, intituled "An Act to render more simple and effectual the titles by which Congregations or Societies for purposes of Religious Worship or Education hold property for such purposes," 13 & 14 Vic. c. 28, s. 1, recited :—

"That it was expedient to render more simple and effectual the titles by which congregations or societies associated together for the purposes of maintaining religious worship, or promoting education in England, Wales, or Ireland, might hold the property required for such purposes, enacted that wherever freehold, leasehold, copyhold, or customary property in England or Wales had been, or thereafter should be acquired by any congregation or society, or body of persons associated for religious purposes, or for the promotion of education, as a chapel, meeting-house, or other place of religious worship, or as a dwelling-house for the minister of such congregation, with offices, garden, and glebe or land in the nature of glebe for his use, or as a school-house with schoolmaster's-house, garden, and playground; or as a college, academy, or seminary, with or without grounds for air, exercise, or recreation; or as a hall or rooms for the meeting or transaction of the business of such congregation or society or body of persons, and wherever the

conveyance, agreement, or other assurance of such property had been, or might be, taken to or in favour of a trustee or trustees to be from time to time appointed, or of any party or parties named in such conveyance, assignment, or other assurance, or subject to any trust for the congregation, or society, or body of persons, or of the individuals composing the same; such conveyance, assignment, or other assurance, should not only vest the freehold, leasehold, copyhold, or customary property thereby conveyed or otherwise assured in the party or parties named therein, but should also effectually vest such freehold, leasehold, copyhold, or customary property in their successors in office for the time being and the old continuing trustees, if any, jointly, or if there were no old continuing trustees, then in such successors for the time being wholly chosen and appointed in the manner provided, or referred to, in, or by such conveyance, assignment, or other assurance, or in any separate deed or instrument declaring the trust thereof, or if no mode of appointment be therein set forth, prescribed, or referred to, or if the power of appointment were lapsed, then in such manner as should be agreed upon by such congregation, or society, or body of persons, upon such and the like trusts, and with, under, and subject to the same powers and provisions as were contained or referred to in such conveyance, agreement, or other assurance, or in any such separate deed or instrument, or upon which such property was held, and that without any transfer, assignment, conveyance, or assignment whatsoever, anything in such conveyance, assignment, or other assurance, or in any such separate deed or instrument contained to the contrary notwithstanding. Provided that in case of any appointment of a new trustee or trustees, or of the conveyance of the legal estate in any such property being made as theretofore was by law required, the same should be as valid and effectual to all intents and purposes as if that Act had not been passed.

Sec. 2. Where such property should be of copyhold or customary tenure, and liable to the payment of a fine, with or without a heriot, on the death or alienation of the tenant or tenants, it should be lawful for the lord or lady of the manor, of whom such property should be holden, on the next appointment of a new trustee or trustees thereof and at the expiration of every period of forty years thereafter, so long as such property should belong to or be held in trust for such congregation, or society, or body of persons, or other party or parties to whom such property might have been or should be conveyed for their benefit, to receive and take a sum corresponding to the fine and heriot, if any, which would have been payable by law upon the death or alienation of the tenant or tenants thereof, and such payments should be in full of all fines payable to the lord or

lady of the manor, of whom such property was holden, while the same shall remain the property or be held in trust for such congregation, or such society, or body of persons, and the lord or lady of such manor should have all such powers for the recovery of such sums as he or she could have had in the event of the tenant or tenants of such property having died or having alienated the same.

Sec. 3. For the purpose of preserving evidence of every such choice, and appointment of a new trustee, or new trustees, and of the person or persons in whom such charitable estates and property should so, from time to time, become legally vested, every such choice and appointment of a new trustee or new trustees should be made to appear by some deed under the hand and seal of the chairman for the time being of the meeting at which such choice and appointment should be made, and should be executed in the presence of such meeting, and be attested by two or more credible witnesses, which deed might be in the form or to the like effect of the schedule to that Act, or as near thereto as circumstances would allow, and might be given in evidence in all courts and proceedings in the same manner and on the like proof as deeds under seal, and should be evidence of the truth of the several matters and things therein set forth.

THE SCHEDULE.

Memorandum of the choice and appointment of new trustees of the (describe the chapel, school, or other building and property) situate in the parish of in the county of at a meeting duly convened and held for that purpose (in) on the day of A.D.

Names and descriptions of all the trustees on the constitution or last appointment of trustees made the day of A.D.

A. B. of
C. D. of
&c., &c.

Names and descriptions of all the trustees in whom the said (chapel or other building or property) now becomes legally vested—

First: Old continuing trustees—

A. B. now of
C. D. now of
&c., &c.

Second: New trustees now chosen and appointed—
E. F. of
G. H. of
&c., &c.

Dated this day of A.D.

(L. S.)
Chairman of the said meeting.

Signed, sealed, and delivered by the said
as chairman of the said meeting, at and in the presence of the said meeting, on the day and in the year aforesaid, in the presence of

L. M. of
P. T. of

N.B.—The blanks and parts to be filled up according to the circumstances of each case.

APPENDIX.

THE TOLERATION ACT.

ANNO PRIMO GUILIELMI ET MARIÆ, c. 18.

An Act for exempting their Majesties' Protestant Subjects dissenting from the Church of England from the Penalties of certain Laws.

FORASMUCH as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their Majesties' Protestant subjects in interest and affection:

2. Be it enacted by the King's and Queen's Most Excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same. That neither the statute made in the three and twentieth year of the reign of the late Queen Elizabeth, intituled, "An Act to retain the Queen's Majesty's subjects in their due obedience;" nor the statute made in the twenty-ninth year of the said Queen, intituled, "An Act for the more speedy and due execution of certain branches of the statute made in the three and twentieth year of the Queen's Majesty's reign, viz., the aforesaid Act"; nor that branch or clause of a statute made in the first year of the reign of the said Queen, intituled, "An Act for the Uniformity of Common Prayer and Service in the Church, and Administration of the Sacraments;" whereby all persons having no lawful or reasonable excuse to be absent, are required to resort to their parish church or chapel, or some usual place where the Common Prayer shall be used, upon pain of punishment by the censures of the Church, and also upon pain that every person so offending shall forfeit for every such offence twelve pence; nor the statute made in the third year of the reign of the late King James I., intituled, "An Act for the better discovering and repressing Popish Recusants;"

nor that other statute made in the same year, intituled, "An Act to prevent and avoid dangers which may grow by Popish Recusants;" nor any other law or statute of this realm made against Papists or Popish recusants, except the statute made in the five and twentieth year of King Charles II., intituled, "An Act for preventing Dangers which may happen from Popish Recusants;" and except also the statute made in the thirtieth year of the said King Charles II., intituled, "An Act for the more effectual preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament," shall be construed to extend to any person or persons dissenting from the Church of England that shall take the oaths mentioned in a statute made this present Parliament, intituled, "An Act for removing and preventing all questions and disputes concerning the assembling and sitting of this present Parliament," and shall make and subscribe the declaration mentioned in a statute made in the thirtieth year of the reign of King Charles II., intituled, "An Act to prevent Papists from sitting in either House of Parliament," which oaths and declaration the justices of peace at the general sessions of the peace, to be held for the county or place where such person shall live, are hereby required to tender and administer to such persons as shall offer themselves to take, make, and subscribe the same, and thereof to keep a register; and likewise none of the persons aforesaid shall give or pay as any fee or reward to any officer or officers belonging to the Court aforesaid above the sum of sixpence, nor that more than once, for his or their entry of his taking the said oaths and making and subscribing the said declaration; nor above the further sum of sixpence for any certificate of the same, to be made out and signed by the officer or officers of the said court.

3. And be it further enacted by the authority aforesaid, that all and every person and persons already convicted or prosecuted in order to conviction of recusancy, by indictment, information, action of debt or otherwise, grounded upon the aforesaid statutes or any of them, that shall take the said oaths mentioned in the said statute made this present Parliament and make and subscribe the declaration aforesaid in the Court of Exchequer, or assizes, or general or quarter sessions to be held for the county where such person lives, and to be thence respectively certified into the Exchequer, shall be thenceforth exempted and discharged from all the penalties, seizures, forfeitures, judgments, and executions incurred by force of any of the aforesaid statutes without any composition, fee, or further charge whatsoever.

4. And be it further enacted by the authority aforesaid, that all and every person and persons that shall as aforesaid take the said oaths and make and subscribe the declaration aforesaid shall not be liable to any pains, penalties, or forfeitures mentioned in an Act made in the five and thirtieth year of the reign of the late Queen Elizabeth, intituled "An Act to retain the Queen's Majesty's subjects in their due obedience;" nor in an Act made in the two and twentieth year of the reign of the late King Charles II., intituled "An Act to prevent and suppress seditious conventicles;" nor shall any of the said persons be prosecuted in any Ecclesiastical Court for or by reason of their nonconforming to the Church of England.

5. Provided always, and be it enacted by the authority aforesaid, that if any assembly of persons dissenting from the Church of England shall be had in any place for religious worship with the doors locked, barred, or bolted during any time of such meeting together, all and every person or persons that shall come to and be at such meeting shall not receive any benefit from this law, but be liable to all the pains and penalties of all the aforesaid laws recited in this Act for such their meeting, notwithstanding his taking the oaths and his making and subscribing the declaration aforesaid.

6. Provided always that nothing herein contained shall be construed to exempt any of the persons aforesaid from paying of tithes or other parochial duties or any other duties to the Church or minister, nor from any prosecution in any Ecclesiastical Court or elsewhere for the same.

7. And be it further enacted by the authority aforesaid, that if any person dissenting from the Church of England as aforesaid, shall hereafter be chosen or otherwise appointed to bear the office of high constable, or petit constable, churchwarden, overseer of the poor, or any other parochial or ward office, and such person shall scruple to take upon him any of the said offices in regard of the oaths or any other matter or thing required by the law to be taken or done in respect of such office, every such person shall and may execute such office or employment by a sufficient deputy, by him to be provided, that shall comply with the laws on this behalf. Provided always the said deputy be allowed and approved by such person or persons in such manner as such officer or officers respectively should by law have been allowed and approved.

8. And be it further enacted by the authority aforesaid, that no person dissenting from the Church of England, in holy orders or

pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation of dissenting Protestants, that shall make and subscribe the declaration aforesaid, and take the said oaths at the general or quarter sessions of the peace to be held for the county, town, parts, or division where such person lives, which court is hereby empowered to administer the same, and shall also declare his approbation of and subscribe the Articles of Religion mentioned in the statute made in the thirteenth year of the reign of the late Queen Elizabeth, except the Thirty-fourth, Thirty-fifth, Thirty-sixth, and these words of the Twentieth Article, viz.: "The Church hath power to decree rites or ceremonies, and authority in controversies of faith, and yet," shall be liable to any of the pains or penalties mentioned in an Act made in the seventeenth year of the reign of King Charles II., intituled "An Act for restraining Nonconformists from inhabiting in Corporations," nor the penalties mentioned in the aforesaid Act made in the two and twentieth year of his said late Majesty's reign, for or by reason of such persons preaching at any meeting for the exercise of religion, nor to the penalty of one hundred pounds mentioned in an Act made in the thirteenth and fourteenth years of King Charles II., intituled, "An Act for the Uniformity of Public Prayers, and Administration of Sacraments and other Rites and Ceremonies," and for establishing the form of making, ordaining, and consecrating of bishops, priests, and deacons in the Church of England, for officiating in any congregation for the exercise of religion, permitted and allowed by this Act.

9. Provided always, that the making and subscribing the said declaration, and the taking the said oaths and making the declaration of approbation and subscription to the said Articles, in manner as aforesaid, by every respective person or persons hereinbefore mentioned, at such general or quarter sessions of the peace as aforesaid, shall be then and there entered of record in the said court, for which sixpence shall be paid to the clerk of the peace and no more. Provided that such person shall not at any time preach in any place but with the doors not locked, barred, or bolted, as aforesaid.

10. And whereas some dissenting Protestants scruple the baptizing of infants, be it enacted, by the authority aforesaid, that every person in pretended holy orders, or pretending to holy orders, or preacher or teacher that shall subscribe the aforesaid Articles of Religion, except before excepted, and also except part of

the seven and twentieth Article, touching infant baptism, and shall take the said oaths, and make and subscribe the declaration aforesaid in manner aforesaid, every such person shall enjoy all the privileges, benefits, and advantages which any other Dissenting minister as aforesaid might have or enjoy by virtue of this Act.

11. And be it further enacted by the authority aforesaid, that every teacher or preacher in holy orders, or pretended holy orders, that is a minister, preacher, or teacher of a congregation, that shall take the oaths herein required, and make and subscribe the declaration aforesaid, and also subscribe such of the aforesaid Articles of the Church of England as are required by this Act in manner aforesaid, shall be thenceforth exempted from serving upon any jury, or from being chosen or appointed to bear the office of churchwarden, overseer of the poor, or any other parochial or ward office, or other office in any hundred of any shire, city, town, parish, division, or wapentake.

12. And be it further enacted by the authority aforesaid, that every justice of the peace may at any time hereafter require any person that goes to any meeting for exercise of religion, to make and subscribe the declaration aforesaid, and also to take the said oaths or declaration of fidelity hereinafter mentioned, in case such person scruples the taking of an oath, and upon refusal thereof such justice of the peace is hereby required to commit such person to prison without bail or mainprize, and to certify the name of such person to the next general or quarter sessions of the peace to be held for that county, city, town, part or division where such person then resides; and if such person so committed shall, upon a second tender at the general or quarter sessions, refuse to make and subscribe the declaration aforesaid, such person refusing shall be then and there recorded, and he shall be taken thenceforth to all intents and purposes for a Popish recusant convict, and suffer accordingly, and incur all the penalties and forfeitures of all the aforesaid laws.

13. And whereas there are certain other persons, dissenters from the Church of England, who scruple the taking of any oath, be it enacted by the authority aforesaid, that every such person shall make and subscribe the aforesaid declaration, and also this declaration of fidelity following, viz :—

> I, *A. B.*, do sincerely promise and solemnly declare before God and the world, that I will be true and faithful to King William and Queen Mary, and I do solemnly profess and

declare that I do from my heart abhor, detest and renounce as impious and heretical that damnable doctrine and position, that princes excommunicated or deprived by the Pope or any authority of the See of Rome may be deposed or murthered by their subjects or any other whatsoever. And I do declare that no foreign prince, person, prelate, state or potentate hath or ought to have any power, jurisdiction, superiority, pre-eminence or authority, ecclesiastical or spiritual within this realm."

And shall subscribe a profession of their Christian belief in these words:—

"I, *A. B.*, profess faith in God the Father, and in Jesus Christ his Eternal Son, the true God, and in the Holy Spirit, one God, blessed for evermore; and do acknowledge the Holy Scriptures of the Old and New Testament to be given by Divine inspiration."

Which declarations and subscription shall be made and entered of record at the general or quarter sessions of the peace for the county, city or place where every such person shall then reside, and every such person that shall make and subscribe the two declarations and profession aforesaid being thereunto required shall be exempted from all the pains and penalties of all and every the afore-mentioned statutes made against Popish recusants or Protestant Nonconformists, and also from the penalties of an Act made in the fifth year of the reign of the late Queen Elizabeth, intituled, "An Act for the assurance of the Queen's Royal power over all estates and subjects within her dominions for or by reason of such persons not taking or refusing to take the oath mentioned in the said Act," and also from the penalties of an Act made in the thirteenth and fourteenth years of the reign of King Charles II., intituled, "An Act for preventing mischiefs that may arise by certain persons, called Quakers, refusing to take lawful oaths, and enjoy all other the benefits, privileges and advantages under the like limitations, provisoes and conditions which any other dissenters shall or ought to enjoy by virtue of this Act."

14. Provided always, and be it enacted by the authority aforesaid, that in case any person shall refuse to take the said oaths when tendered to them, which every justice of the peace is hereby empowered to do, such person shall not be admitted to make and subscribe the two declarations aforesaid, though required thereunto either before any justice of the peace or at the general or quarter sessions

before or after any conviction of Popish recusancy as aforesaid, unless such person can within thirty-one days after such tender of the declarations to him produce two sufficient Protestant witnesses to testify upon oath that they believe him to be a Protestant Dissenter, or a certificate under the hands of four Protestants who are comformable to the Church of England, or have taken the oaths and subscribed the declaration above-mentioned, and shall also produce a certificate under the hands and seals of six or more sufficient men of the congregation to which he belongs, owning him for one of them.

15. Provided also, and be it enacted by the authority aforesaid, that until such certificate under the hands of six of his congregation as aforesaid be produced, and two Protestant witnesses come to attest his being a Protestant dissenter, or a certificate under the hands of four Protestants as aforesaid be produced, the justice of the peace shall and hereby is required to take a recognizance with two sureties in the penal sum of fifty pounds, to be levied of his goods and chattels, lands and tenements, to the use of the King's and Queen's Majesties, their heirs and successors, for his producing the same, and if he cannot give such security, to commit him to prison, there to remain until he has produced such certificates or two witnesses as aforesaid.

16. Provided always, and it is the true intent and meaning of this Act, that all the laws made and provided for the frequenting of Divine Service on the Lord's Day, commonly called Sunday, shall be still in force and executed against all persons that offend against the said laws, except such persons come to some congregation or assembly of religious worship allowed or permitted by this Act.

17. Provided always, and be it further enacted by the authority aforesaid, that neither this Act, nor any clause, article or thing herein contained shall extend or be construed to extend to give any ease, benefit, or advantage, to any Papist or Popish recusant whatsoever, or any person that shall deny in his preaching or writing the doctrine of the Blessed Trinity, as it is declared in the aforesaid Articles of Religion.

18. Provided always, and be it enacted by the authority aforesaid, that if any person or persons at any time or times after the tenth day of June do and shall willingly and of purpose maliciously

or contemptuously come into any cathedral or parish church, chapel, or other congregation permitted by this Act, and disquiet or disturb the same, or misuse any preacher or teacher, such person or persons upon proof thereof before any justice of the peace by two or more sufficient witnesses shall find two sureties to be bound by recognizance in the penal sum of fifty pounds and in default of such sureties shall be committed to prison there to remain till the next general or quarter sessions, and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of twenty pounds to the use of the King's and Queen's Majesties, their heirs and successors.

19. Provided always that no congregation or assembly for religious worship shall be permitted or allowed by this Act until the place of such meeting shall be certified to the Bishop of the Diocese, or to the Archdeacon of that Archdeaconry, or to the Justices of the Peace, at the general or quarter sessions of the peace for the county, city or place in which such meeting shall be held, and registered in the said Bishop's or Archdeacon's court respectively, or recorded at the said general or quarter sessions, the register or clerk of the peace whereof respectively is hereby required to register the same and to give certificate thereof to such person as shall demand the same, for which there shall be no greater fee nor reward taken than the sum of sixpence.

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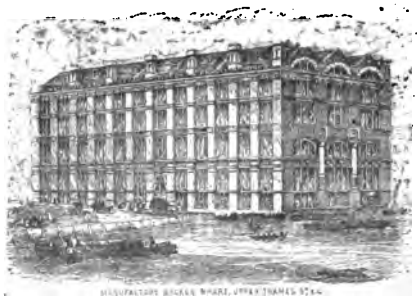

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